

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. [PERISHABLE COMMODITIES] HANDLING AND MARKETING OF PERISHABLE COMMODITIES [PROGRAM]

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Chapter 14 (Perishable Commodities Handling and Marketing Program), Subchapter A (General Provisions), §14.1 (Definitions), §14.3 (Fees), and §14.4 (Cancellation of License); Subchapter B (Produce Recovery Fund Claims), §14.10 (Claims Against the Fund), §14.11 (Determination on Claims by the Department), §14.12 (Filing of Notice of Protest; Appeal to the Board), §14.13 (Payment of Claims from the Fund), and §14.14 (Reimbursement to the Fund); and Subchapter C (Produce Recovery Fund Board), §14.20 (Purpose and Scope), §14.21 (Duties of the Board and the Department), §14.22 (Meetings), §14.23 (Conduct of Hearings of the Produce Recovery Fund Board), §14.24 (The Board's Final Determination), and §14.25 (Motion for Rehearing).

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

In accordance with Texas Agriculture Code (Code), §103.004 and §103.012, the Produce Recovery Fund Board (Board) is required to advise the Department in its rulemaking capacity under Chapter 103 of the Texas Agriculture Code (Code). Chapter 103 governs the Board and payments from the Produce Recovery Fund pursuant to claims against license holders and persons requiring to be licensed as handlers of perishable commodities under Chapter 101 of the Code.

The Department presented the proposed amendments to the Board at its open meeting on November 15, 2023. The Board discussed and approved the proposed amendments by a unanimous vote.

The proposed amendments replace the current title of this chapter with "Handling and Marketing of Perishable Commodities" for consistency with the name of the Department's related program and the title of Chapter 101 of the Code.

The proposed amendments to §14.1 include a definition for the "Administrative Procedure Act" to account for its frequency in this chapter, remove a definition for "agent" due to its infrequency in this chapter, update a reference in the definition for the "Open

Meetings Act," add language to the definition for "claim" to specify against whom claims can be filed, and add a citation to the Code to the definition of "perishable commodity" to denote the statutory source of its definition.

The proposed amendments to §14.3 add language specifying those agents who require identification cards.

The proposed amendments to §14.4 specify a reference to the Department's general rules of procedure outlines in Chapter 1, Subchapter A of this title and change a reference to Chapter 2001 of the Texas Government Code to account for its proposed definition in §14.1.

The proposed amendments to §14.10 remove subsection (e) to become new subsection (d) §14.10 as its provisions fit more appropriately with those of §14.14, remove an outdated provision addressing claims prior to September 1, 2009, remove unnecessary language precluding the filing of out-of-state claims, and add a reference to §14.3 to specify claim-filing fees.

The proposed amendments to §14.11 change references to this chapter from "title" to "chapter," as the latter term is generally used throughout Title 4, update a reference to Chapter 1, Subchapter A of this title, change "recommendation" to "proposal for decision" as the former is used throughout this chapter and Chapter 1, Subchapter A of this title, make "Deputy Commissioner" lower-case as "Commissioner" is made lower-case throughout this chapter, and replace general references to "agency" with "department."

The proposed amendments to §14.12 change the term "person" to "party" as the former is used within the context of a hearing and in Chapter 103 of the Code, make "proposal for decision" lower-case to be the same as its occurrences in the Department's rules of procedure in Chapter 1, Subchapter A of this title and Chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and replace general references to "agency" with "department."

The proposed amendments to §14.13 remove an outdated subsection outlining payments for claims prior to September 1, 2009; remove an obsolete subsection limiting total payments on claims against a single entity to \$85,000 as its statutory analogue, former Subsection 103.008(c) of the Code, was removed in 2009; and remove a reference to its restrictions on claim payments and replace it with the applicable statutory authority in Chapter 103 of the Code.

The proposed amendments to §14.14 add subsection (e) of §14.10 as new subsection (d) as its provisions fit more appropriately with those of §14.14 and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.20 update a reference to Chapter 1, Subchapter A of this title.

The proposed amendments to §14.22 remove unnecessary language addressing requirements of the Open Meetings Act and remove an incorrect provision on notice of Board meetings being published in the *Texas Register*.

The proposed amendments to §14.23 update Department contact information for prehearing motions and exhibit requests, specify that requests to the Department for hearing-related information must be written, and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.25 require motions for rehearing to be sent to opposing parties and Board rulings on these motions to be made in accordance with Section 2001.146 of the Texas Government Code and update Department contact information.

In addition, "Board," "Fund," and "Chairman" are made lowercase throughout these rules to align with their occurrences in Chapter 103 of the Code. Likewise, "licensee" and "complaining party" are changed to "license holder" and "aggrieved party" throughout these rules because the latter terms are used in Chapter 103.

Also, editorial changes are made throughout these rules to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Philip Wright, the Administrator for Regulatory Affairs, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering them.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be increased consumer protection due to updates to and improved readability of the chapter. Mr. Wright has also determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments 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.

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 amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

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

- (1) they will not create or eliminate a government program;
- (2) their implementation will not require the creation or elimination of existing employee positions;

(3) their implementation will not require an increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) they will not create a new regulation;

(6) they will not expand, limit, or repeal an existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the state's economy.

Comments on this proposal may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to chris.gee@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments are proposed under the Department's authority in Section 12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rule to administer its powers and duties under the Code; such powers and duties include Code, Section 101.006, the requirement that the Department to set fees for licensure to handle perishable commodities by rule; Code, Section 101.010, which requires the Department to set fees for identification cards for agents of license holders who either transport or buy perishable commodities; Code, Section 103.005, which also requires the Department to set fees for filing claims against the Produce Recovery Fund (Fund); Code, Section 103.009, which further requires the Department to issue orders canceling licenses and to deny issuing new licenses or renewing licenses for license holders or those required to be licensed to handle perishable commodities who, following payments from the Fund against them, neither pays nor agrees to pay either the Fund or the aggrieved party; Code, Section 103.011, which requires the Department to set an annual fee for those licensed under Code, Chapter 101; and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code (Code), Chapters 101[;] and 103, and Chapter 1, Subchapter A of this title (relating to [the] General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Procedure Act--The Texas Government Code, Chapter 2001 [~~Agent--An employee authorized to act for and on behalf of a licensee as a buying agent and/or a transporting agent~~].

(2) (No change.)

(3) Citrus fruit [~~Fruit~~]~~--Any fruit belonging to the genus Citrus, Poncirus, Microcitrus, Eremocitrus, or Fortunella, including grapefruit, oranges, lemons, limes, and tangerines.~~

(4) Claim--A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable

commodities grown in Texas by a license holder or person required to be licensed.

(5) License holder [Licensee]--A person who holds a license issued under the [Texas Agriculture] Code, Chapter 101.

(6) Open Meetings Act--The [Texas Open Meetings Act,] Texas Government Code, Chapter 551.

(7) Perishable commodity [Commodity]--As defined in the Code, §101.001, fresh [Fresh] produce grown in Texas and generally considered a perishable vegetable or fruit.

§14.2. Citrus Proof of Ownership.

A license holder [licensee] or a packer, processor, warehouseman or transporter may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department; except for citrus fruit being transported from the farm or grove to market or the place of first processing by the producer of the citrus fruit operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

§14.3. Fees.

(a) License and ~~registration~~ identification card fees.

(1) (No change.)

(2) The fee for each identification card for transporting and buying agents is \$30.

(b) - (d) (No change.)

§14.4. Cancellation of License.

If an award and payment is made from the fund [Fund] and the license holder [licensee], or person required to be licensed, fails to reimburse and/or fails to agree in writing to reimburse the fund [Fund] and/or the aggrieved [complaining] party [to the ease in accordance with the provisions of this chapter, the department shall initiate proceedings, after 90 days, the department shall initiate proceedings [of failure to reimburse and/or failure to agree in writing to reimburse the Produce Recovery Fund,] to cancel the license holder's [licensee's] license in accordance with the Texas Agriculture Code (Code), §103.009. Such proceedings shall be conducted in accordance with the [Texas Agriculture] Code, §12.032, the Administrative Procedure Act, [Texas Government Code, Chapter 200], and the department's General Rules of Practice and Procedure found at Chapter 1, Subchapter A of this title [relating to General Practice and Procedure] [rules of procedure].

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 May 6, 2024.

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Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §§14.10 - 14.14

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Code, Section 103.009, which requires the Department to set schedules for reimbursements to the Fund and payments to aggrieved parties following Department payments from the Fund and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.10. Claims Against the Fund.

(a) What claims can be filed. Only claims against a license holder [licensee] or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed. [The following claims may not be accepted:]

[(1) Claims for perishable commodities grown out-of-state.]

[(2) Claims filed under the Perishable Agriculture Commodities Act (PACA)] that are accepted as formal complaints and adjudicated by the United States Department of Agriculture, or claims for which an aggrieved party [a complainant] has filed suit in a court of competent jurisdiction shall not be accepted.

[(b) Who may file. A person who suffers a loss or damages due to the violation of the terms or conditions of a contract by a licensee or a person required to be licensed may file a claim against the Fund.]

(c) How to file. A claim shall be filed with the department on a prescribed complaint form and shall be accompanied by the [prescribed] fee required by §14.3 of this chapter (relating to Fees). The date of postmark, if mailed, or the date the complaint and fee are received by the department, if hand-delivered, shall be the date the claim is deemed filed.

(d) Statute of Limitations. A claim shall be barred if it is filed later than [one year from the date the violation of the terms or conditions of a contract occurred. This limitation applies to claims that are based on violations that occurred prior to September 1, 2009. Claims based on violations that occurred on or after September 1, 2009 shall be barred if it is filed later than] two years from the date the payment was due.

[(e) Respondent's Option to Pay. If a recommendation for payment from the Fund is made by a department hearing officer or a payment is awarded in a final department or Board determination, the respondent may pay the amount found to be due directly to complainant rather than have that payment made by the Fund. If direct payment is made, parties shall notify the department in writing.]

§14.11. Determination on Claims by the Department.

(a) Once a claim is filed in accordance with §14.10 of this chapter [title] (relating to Claims Against the Fund), the department shall investigate the claim and may conduct a hearing to determine the amount due the aggrieved party. All hearings shall be conducted by a department hearing officer in accordance with the provisions of the Administrative Procedure Act and [the department's General Rules of Practice and Procedure found at] Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]).

(b) (No change.)

(c) Parties may protest the proposal for decision [recommendation] made by the department hearing officer by filing

a Notice of Protest in accordance with §14.12 of this chapter [title] (relating to Filing of Notice of Protest; Appeal to the Board). If no protest is filed, the case will be forwarded to the deputy commissioner [Deputy Commissioner] for a final [agency] determination.

(d) Parties may also protest the department's [agency's] final determination by filing a Notice of Protest in accordance with §14.12 of this chapter [title (relating to Filing of Notice of Protest; Appeal to the Board)].

(e) (No change.)

§14.12. Filing of Notice of Protest; Appeal to the Board.

(a) A party [person] who disputes the recommendation of the department's hearing officer or the department's final determination on a claim shall file a Notice of Protest with the [department. The notice shall be sent to the attention of the] Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the Notice of Protest shall be sent to the opposing party and/or a designated representative.

(b) A Notice of Protest shall be in writing, state the [reason or] reasons for the protest, and request a hearing before the board [Board].

(c) A Notice of Protest must be received by the department within 15 days from the date of the receipt of the hearing officer's proposal for decision [Proposal for Decision] on the claim, or if an appeal from the final department [agency] determination, within 20 days from the date the final department [agency] determination was mailed. A Notice of Protest [The department shall accept notices of protest] filed by fax shall be accepted if it [facsimile transmission; as long as the facsimile] is received no later than 5:00 [5] p.m. on the due date. [Oral notices of protest shall not be accepted.]

(d) If a Notice of Protest is received on a claim, the claim shall be referred to the board [Board] for hearing.

§14.13. Payment of Claims from the Fund.

[(a) The following payments of claims shall apply for a claim based on a violation occurring prior to September 1, 2009.]

[(1) Claims of \$2000 or less may be paid in full.]

[(2) Claims of more than \$2000 may be paid in the following manner:]

[(A) If the claim was filed on or after September 1, 1999, but prior to September 1, 2009, the first \$2000 plus no more than 70% of the amount in excess of \$2,000, may be paid.]

[(B) If the claim was filed prior to September 1, 1999, the first \$1,000 plus no more than 60% of the amount in excess of \$1000, may be paid.]

[(3) Claims arising from Same Contract. Total payment for claims arising from the same contract shall not exceed \$35,000.]

[(4) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed \$85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.]

[(b) Payment [The following payments] of claims from the fund shall be subject to the following: [apply for a claim based on a violation occurring on or after September 1, 2009.]

(1) (No change.)

(2) [Claims Arising from Same Contract.] Total payment for claims arising from the same contract shall not exceed \$50,000.

[(3) Claims Against a Single Licensee or a person required to be licensed. Total payment for claims against a single licensee or a person required to be licensed shall not exceed \$85,000 in any one calendar year.]

(3) [(4)] Claims against a person who is not licensed. Payment for claims against a person who is not licensed at the time the claim was filed shall not exceed 80% of the total recovery [claim].

(4) [(5)] Claims shall be paid in accordance with the order that a final determination is made by the department or the board [Board]. In cases when a claim cannot be paid in full due to the restrictions of the Texas Agriculture Code, §103.008(c) [this subsection], the aggrieved party [claimant] shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the fund [Fund] during the next calendar year.

§14.14. Reimbursement to the Fund.

(a) If the department pays a claim [against a licensee, or a person required to be licensed,] from the fund [Fund]:

(1) Upon issuance of a final determination from the department or the board [Board], the license holder [licensee] shall reimburse the total amount paid by the fund [Fund] or agree in writing to reimburse the fund [Fund] the total amount paid by the fund [Fund]. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the fund one and one-half times the amount of the claim paid by the fund [Fund], upon issuance of a final determination from the department or the board [Board]. Payment to the fund [Fund] is due in full within 30 days of the date of the final [agency] determination. If the license holder [licensee], or a person required to be licensed, cannot pay the full amount owed to the fund [Fund] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the fund pursuant to [amount owed to the Fund on an amortization schedule set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the fund [Fund] for payments made to the aggrieved party [claimant], the license holder [licensee], or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the fund [Fund]). If the license holder [licensee], or a person required to be licensed, cannot pay the full amount to the aggrieved party [claimant] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the amount owed to the aggrieved party pursuant to [claimant on an amortization schedule as set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the fund [Fund] is fully reimbursed.

(3) Payment [Amortization] Schedule [for Reimbursement to the Produce Recovery Fund and Claimant]. Claims of:

(A) - (D) (No change.)

(b) Monthly installments to the fund [Fund] are due on the last business [working] day of the month and payable to TDA, P.O. Box 12847, Austin, Texas 78711. The department may make exceptions on payment schedules for good cause shown.

(c) If a license holder [licensee], or a person required to be licensed, owes money to the fund [Fund] at the time the license holder [licensee], or a person required to be licensed, makes a claim against the fund [Fund], the department shall offset the amount owed to the fund [Fund] from the amount determined to be payable from the fund [Fund].

(d) Respondent's Option to Pay. The respondent may pay the amount found to be directly to the aggrieved party rather than have the payment made by the fund. If direct payment is made, the parties shall notify the department in writing.

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

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For further information, please call: (512) 463-6591



SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §§14.20 - 14.26

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Section 103.012 of the Texas Agriculture Code, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.20. Purpose and Scope.

The purpose of this subchapter [these sections] is to provide [operating] procedures for the board [Produce Recovery Fund Board (the Board)], and to provide procedures for the conduct and determination of Board decisions], so that hearings and other proceedings before the Board may be conducted in a uniform and efficient manner. Unless otherwise provided, these rules are designed to supplement procedures established in Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]), and the Administrative Procedure Act and should be read together with those procedures.

§14.21. Duties of the Board and the Department.

(a) The board [Board] shall:

(1) advise the department on all matters relating to the fund [Fund], including the fund's [Fund's] budget and revenues necessary to accomplish the purposes of the fund [Fund];

(2) advise the department on the adoption of rules relating to the payment of claims from the fund [Fund] and to the administration of the fund [Fund]; and

(3) conduct hearings on claims on which a Notice of Protest has been filed with the department.

(b) The department shall:

(1) administer the fund [Fund], including the collection of fees from license holders [licensees], or persons [a person] required to be licensed, which are to be deposited into the fund [Fund] in accordance with the Texas Agriculture Code (Code), Chapter 103;

(2) receive and process claims;

(3) conduct hearings on claims, when [where] appropriate, and issue determinations [an agency determination] on claims;

(4) refer claims to the board when a Notice of Protest is filed [Board, where appropriate];

(5) [where an award from the Fund is made,] process payment of claims in accordance with the Code, Chapter 103, when an award from the fund is made;

(6) [where appropriate,] seek reimbursement of payments made from the fund when appropriate [Fund]; and

(7) provide administrative support to the board [Board], including posting notices of board [Board] meetings, making arrangements for board [Board] meetings, and preparing and mailing [ef] notices of hearing and other correspondence to parties on cases heard by the board [Board].

§14.22. Meetings.

(a) Location, conduct and time of meetings. The board [Board] shall meet in Austin, or other places designated by the board [Board], on dates to be determined by the department with the advice of the board [Board], for the purpose of conducting hearings on matters appealed to the board [Board] and/or for the purpose of conducting business authorized by the Texas Agriculture Code, Chapter 103. Meetings will be conducted in accordance with the Open Meetings Act.

(b) Notice of meetings. Notice [A written notice] of the agenda, date, time and place of each [business] meeting [of the Board] and/or hearing of [conducted by] the board [Board,] shall be provided [published in the Texas Register] in accordance with the Open Meetings Act. [In cases of emergency or urgent public necessity, notice shall be given as authorized by the Open Meetings Act.]

(c) Chairman to preside. The chairman of the board [Board] shall preside over all meetings of the board [Board] and shall perform all duties delegated to the chairman [him or her] under this subchapter [these rules]. In the chairman's absence, the vice-chairman shall preside over all meetings of the board [Board], and shall perform all duties of the chairman under this subchapter [these rules]. The vice-chairman shall be selected by a majority of board [Board] members present at the time of selection.

(d) Public comment period. As part of its [business] meetings, the board [Board] shall [include a public comment period to] allow members of the public to [appear and provide] comment on matters within the jurisdiction of the board [Board]. This item will be included in the agenda of [published in the Texas Register for] the [business] meeting.

§14.23. Conduct of Hearings of the Produce Recovery Fund Board.

(a) Representation. Parties to proceedings before the board [Board] shall have a right to appear and may be represented by counsel, or any other designated person, and shall have a right to have witnesses appear to testify on their behalf.

(b) Review of Department Record and Presentation By Parties.

(1) The board [In hearing cases in which a Notice of Protest has been filed, the Board] shall conduct hearings to review cases for which a Notice of Protest has been filed and base its determination on the record of the hearing held before the department and any subsequent matters filed by parties to the case which are admitted into the record by the board [Board], including any exhibits accepted into the record at the hearing before the board [Board].

(2) The board [Board] may take additional testimony [of parties or other witnesses] and admit into the record any documentary

evidence that it deems necessary to clarify the record of the hearing before the department and/or aid the board [Board] in making its determination on the case.

(3) At the board's [Board's] discretion, any party may present oral testimony or argument [~~to the Board~~] by filing a written request with the board [Board ~~a written request to do so~~] at least five business [working] days prior to the hearing [~~day on which the Board is to consider the case~~]. The board [Board] may waive the five-day [~~five working day~~] requirement for good cause shown.

(c) Ruling on Objections, Motions; Filing of Motions.

(1) The board [Board] shall have the authority to rule on motions, on the admissibility of evidence, on objections, and on amendments to pleadings.

(2) A pre-hearing [Any] motion [~~relating to a pending proceeding~~] shall [~~unless made during a hearing,~~] be written, set forth under oath the relief or order sought and the specific reasons and grounds therefor, and be directed to the board [Board]. Any motion [~~including a motion for continuance~~] shall be filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and distributed to all interested parties, under a certificate of service, not less than seven business [working] days prior to the hearing [designated] date [~~that the matter is set to be heard by the Board~~]. The board [Board] may waive the seven-day [seven day] requirement for good cause shown. A reply to such motion may be filed by any other party to the proceeding. A pre-hearing motion [Pre-hearing motions] shall be ruled on by the chairman [Chairman] at the earliest time practicable, and a final determination [determinations] on any such motion [motions] shall be signed by the chairman [Chairman] on behalf of the board [Board].

(3) When necessary, in the judgment of the chairman [Chairman] and/or the board [Board], or upon request of a party, a hearing may be set to consider any motion. A request for hearing on a motion, or a request for hearing on a final determination issued in response to a motion shall be filed with the board [Board] no later than three business [working] days after receipt of the final determination by the requesting party.

(d) Exhibits.

(1) All exhibits admitted into the record of the hearing before the department and the [tape] recording of the hearing shall be tendered for admission into the record of the hearing before the board [Board]. All such exhibits shall be available to the [~~for inspection by~~] parties prior to the beginning of the hearing, and [~~are available prior to the hearing date~~] to any interested person or party prior to the hearing date upon filing of a written request to the Hearings Clerk [~~Deputy General Counsel, General Counsel Division, Texas Department of Agriculture~~].

(2) A [Each] party shall deliver to the other party any additional documents intended to be offered at the hearing at least three business [working] days prior to the hearing date [~~any documents in addition to those included in the record of the hearing before the department which the party intends to offer at the hearing before the Board~~].

(e) Recording the Hearing and Preparation of Transcript.

(1) All hearings before the board [Board] shall be [tape] recorded and [~~All tape recordings of hearings before the Board shall be~~] maintained by the General Counsel Division, Texas Department of Agriculture.

(2) Upon written request [~~and~~] and payment of any associated [~~the appropriate~~] cost [~~by any party~~], the department shall prepare a

copy of the [tape] recording of a hearing for any party [~~conducted by the Board~~].

(3) Upon written request and payment of any associated cost [~~of any party~~], the department shall prepare, or order the preparation of, a transcript of a hearing for any party [~~conducted by the Board~~]. The Board may assess the cost of the transcript to one or more parties].

(4) In the event a final decision of the board [Board] is appealed to the district court, the board [Board] may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the [Board] proceeding that is required to be transmitted to the reviewing court, as is specified by the board [Board].

§14.24. *The Board's Final Determination.*

(a) All final determinations of the board [Board] shall be in writing and shall set forth findings of fact and conclusions of law as required by the Administrative Procedure Act.

(b) Unless otherwise prohibited by statute or by this chapter, all final board [Board] determinations may be signed by the chairman [Chairman], on behalf of the board [Board]. In the event that the final decision of the board [Board] is not unanimous, the final determination may indicate that the vote was not unanimous, and may indicate those members dissenting.

(c) Except for good cause, the [The] Board's final determination shall be issued within 60 days of the closing of the record of the case [~~unless for good cause, the Board members hearing the case are not able to reconvene to deliberate on a case within the 60 day period after the closing of the record~~].

§14.25. *Motion for Rehearing.*

A motion for rehearing shall be governed by the Administrative Procedure Act, §§2001.145-2001.146. Communications regarding any such motion shall be directed to the board [Board], and filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the motion for rehearing shall [~~should also~~] be sent to the opposing party and/or designated representative. Board rulings on motions for rehearing shall [~~may~~] be made [~~by telephone, mail, or other suitable means of communication~~] in accordance with the Administrative Procedure Act, §2001.146. A final determination granting or denying a motion for rehearing may be signed by the chairman [Chairman] on behalf of the board [Board].

§14.26. *Appeals.*

All appeals from final board [Board] determinations shall be governed by the Administrative Procedure Act, Subchapter G [~~or other pertinent statute~~].

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 May 6, 2024.

TRD-202402065

Susan Maldonado

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 463-6591



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §§65.12 - 65.15; Subchapter D, §65.25 and §65.26; Subchapter F, §65.40 and §65.41; Subchapter H, §65.50; Subchapter I, §§65.60 - 65.63; Subchapter J, §65.70 and §65.71; Subchapter K, §65.83 and §65.86; Subchapter M, §65.101; Subchapter N, §§65.200, 65.206, and 65.217; Subchapter O, §65.300; Subchapter P, §65.401; new Subchapter S, Technical Requirements, amendments to §§65.607 - 65.609, 65.611, 65.612, and 65.614; new rules at Subchapter K, §65.87; and Subchapter R, §§65.550 - 65.552, 65.555, 65.556, 65.559, and 65.560; and the repeal of existing rules at Subchapter B, §65.8; Subchapter L, §65.90 and §65.91; Subchapter M, §65.104; and existing Subchapter R, §§65.600 - 65.604, regarding the Boiler program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The proposed rules make twelve discrete changes to improve standards for and regulation of boilers and those who install, operate, maintain, and inspect them. The amendments originate with staff and the Board of Boiler Rules members and are authorized by the boiler enabling act.

The new and amended rules promote equipment safety and compliance. They include more detailed requirements for installing boilers and reporting their installation; installing blow-down equipment where needed and required; replacing and plugging boiler tubes; provide an option for remote monitoring of carbon monoxide levels in boiler rooms; and add a requirement for a visual display to carbon monoxide detectors if absent.

Other new and amended rules to enhance safety address National Fire Protection Association compliance; safety of the physical conditions of the premises for inspectors; and detailed requirements for preservation of the scene of boiler accidents to aid investigation and determine causes of malfunction.

To provide for more efficient and effective regulation, new rule requirements include clarifying the responsibilities of Authorized Inspection Agencies (AIA) to timely conduct required inspections and imposing the new late inspection fee on them as appropriate; prohibiting inspectors from installing boilers to prevent conflicts of interest; and removing minor or infrequently assessed fees. These amendments replace the late renewal fee with a fairer late inspection fee and a presumption of operation after expiration of the certificate of operation. The fee change for late inspections accompanies the removal of the referral fee for a department inspection when the owner fails to obtain an inspection. The late inspection fee is expected to increase compliance with the required frequency of boiler inspections, resulting in improved safety and more proportionate consequences for non-compliance.

Finally, the department has made edits throughout the rules to correct and update citations, cross-references, grammar, capitalization, and usage to improve accuracy, readability, and con-

sistency in the rule text. These are hence referred to collectively as "nonsubstantive edits" for brevity.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Board of Boiler Rules at its meeting on April 10, 2024. The Board made changes to the proposed rules in §65.555 to clarify the technical requirements for blowdown and added a requirement that blowdown separators or tanks be registered with the National Board of Boiler and Pressure Vessel Inspectors. The Advisory Board voted and recommended that the proposed rules with these changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §65.2, Definitions, to add definitions for blowdown separators, blowdown tanks, and blowdown water; clarify the definition of "install;" make numerous nonsubstantive edits; and renumber the section.

The proposed rules repeal §65.8, Registration--Authorized Inspection Agency Without NB-360 Accreditation, because the National Board has retired this accreditation.

The proposed rules amend §65.12, Boiler Registration and Certificate of Operation Required, to add that the issuance of a certificate of operation triggers the obligation to remain in compliance, to timely conduct the required inspections, and that continued operation is presumed during the term of the certificate. The section is edited for clarity.

The proposed rules amend §65.13, Boiler Installation, to require submission of the installation report upon completion of installation instead of within 30 days after installation, and to prohibit operation or test-firing before the first inspection unless the installation was conducted in compliance with the rules, the installation report has been submitted, and a temporary operating permit has been approved.

The proposed rules amend §65.14, Inspector Commissions, to make a nonsubstantive edit.

The proposed rules amend §65.15, Boiler Certificate of Operation, to add the condition that unpaid invoices associated with a boiler must be paid before the boiler is eligible for a certificate of operation. The section is renumbered, and the section heading is updated.

The proposed rules amend §65.25, Authorized Inspector--Eligibility Requirements and §65.26, Commission-Renewal and Reinstatement, to make non-substantive edits.

The proposed rules amend §65.40, Authorized Inspector--Commission Card, to simplify and clarify the requirements for obtaining and using commission cards.

The proposed rules amend §65.41, Reissuance after Reemployment, to simplify and clarify the requirements for reissuance of a commission card when changing employers. The section heading is amended.

The proposed rules amend §65.50, Inspectors--Prohibited Conflicts of Interest, to prohibit inspectors and inspection agencies from installing boilers or inspecting boilers installed by other inspectors or inspection agencies due to the inherent conflict of interest.

The proposed rules amend §65.60, External Inspection, to make a non-substantive edit.

The proposed rules amend §65.61, Inspection of All Boilers Required, to subject owners, operators, and Authorized Inspection Agencies that are responsible for a boiler to the late inspection fee for failure to conduct the certificate inspection before the certificate of operation expires. Operation beyond expiration of the certificate is presumed. AIAs are required to timely conduct inspections for boilers for which they are responsible. AIAs that are not responsible for a boiler at the time the certificate expires, and those agencies denied access to inspect, are not made responsible for the late inspection fee for failure to conduct the inspection timely. The late inspection fee is made applicable to boilers for which the certificate of operation expires one year or more after the adoption of these rule amendments.

The proposed rules amend §65.62, Notice of Inspection to Owners or Operators of Boilers, to clarify that owners or operators must make boilers available for inspection when notified by the inspector.

The proposed rules amend §65.63, Inspection of Portable Boilers, to make nonsubstantive edits.

The proposed rules amend §65.70, Texas Boiler Numbers--Required, to clarify requirements related to the identification number tag attached to each boiler during its first inspection.

The proposed rules amend §65.71, Texas Boiler Number--Placement on Boiler, to make nonsubstantive edits.

The proposed rules amend §65.83, Boiler Accidents, to clarify and add details about the actions to take and the items to preserve and protect from disturbance following a serious accident until an inspection and investigation are conducted.

The proposed rules amend §65.86, Authorized Inspection Agencies Reporting Requirements, to remove mention of the obsolete NB-360 authorization.

The proposed rules add new §65.87, Boiler Installation Reporting Requirements, to add the updated requirement for the owner, operator, or installer to submit the boiler installation report upon completion of the installation of a boiler.

The proposed rules repeal §65.90, Commissions--Authorized Inspector, because the requirements in this section are obsolete or appear in §§65.14, 65.26, 65.40, and 65.41.

The proposed rules repeal §65.91, Overdue Boiler Inspection--Authorized Inspection Agency Referral, because the Department will no longer refer boilers for which the inspection is past due to another AIA but will instead impose the late inspection fee.

The proposed rules amend §65.101, Board of Boiler Rules--Membership; Presiding Officer, to update the requirements for presiding officer participation consistent with the Act, and to amend the section heading.

The proposed rules repeal §65.104 because the Boiler Board rules in §65.101 are being amended to include the relevant requirement.

The proposed rules amend §65.200, New Boiler Installations, to clarify and update requirements consistent with other updates in the chapter regarding installation, inspection, and operation, and to add the presumption of continued operation past expiration of the certificate of operation unless the owner, operator, or AIA demonstrates otherwise.

The proposed rules amend §65.206, Boiler Room, to add the requirement to install a display on any carbon monoxide detector

that is not so equipped. The amended rule also provides for the choice to use a remote monitoring system provided certain alarm and interlock conditions are met. The section is renumbered.

The proposed rules amend §65.217, Variance, to make nonsubstantive edits.

The proposed rules amend §65.300, Fees, to clarify that the owner or operator is responsible for the fee to file boiler installation reports. Additional amendments remove the late renewal fee, the fee for reissuance of a commission card, the fee for overdue boiler inspections, and make nonsubstantive edits. The rule specifies that any due or past due amounts must be paid with the fee for a certificate of operation. The late inspection fee is imposed and is limited to \$25 per day for the first 30 days following expiration of the certificate of operation. The daily fee increases at the 31st day and the 61st day after expiration of the certificate of operation until the inspection is conducted.

The proposed rules amend §65.401, Sanctions, to impose the late inspection fee for boilers not inspected before the expiration of the certificate of operation, and to make nonsubstantive edits.

The proposed rules amend the heading of Subchapter R, Technical Requirements, to Subchapter R, Basic Technical Requirements, which now encompasses all sections from new §65.550 and ending with new §65.560. Sections 65.550, 65.551, 65.552, 65.556, and 65.559 were formerly §§65.600, 65.601, 65.602, 65.603, and 65.604, respectively, which are proposed for repeal and inclusion with these new section numbers as described in the following. New sections with all new requirements are §65.555 and §65.560.

The proposed rules add new §65.550, Conditions Not Covered by Rules, which is the repealed former §65.600, Conditions Not Covered by Rules, with no substantive changes made.

The proposed rules add new §65.551, General Safety, which is the repealed former §65.601, General Safety, but with new additional requirements for the owner or operator to maintain a safe work environment for access and inspection of a boiler, and which clarifies and updates the procedures for an inspector and the department to follow if the conditions or the boiler itself are unsafe.

The proposed rules add new §65.552, Chimneys and Vents, which is the repealed former §65.602, Chimneys and Vents, with no substantive changes made.

The proposed rules create new §65.555, Boiler Blowdown, which adds requirements to install blowdown separators or blowdown tanks to ensure that the temperature and pressure of the water does not exceed safe levels when discharged from a power boiler into a sanitary sewer. Requirements for design, standards, construction, and registration with the National Board of Boiler and Pressure Vessel Inspectors are included, as is a requirement for compliance with the new requirements no later than six months after the adoption of the rule.

The proposed rules add new §65.556, Boiler Room Ventilation, which is the repealed former §65.603, Boiler Room Ventilation, with no substantive changes made.

The proposed rules add new §65.559, Location of Discharge Outlets, which is the repealed §65.604, Location of Discharge outlets, with no substantive changes made.

The proposed rules create new §65.560, Boiler and Combustion Systems Hazards Code, to add requirements for compliance with National Fire Protection Association Code Book 85 for

certain specified types of boilers, pulverized fuel systems, and steam generators.

The proposed rules would repeal existing §§65.600, 65.601, 65.602, 65.603, and 65.604 and repropose them with additional requirements and nonsubstantive edits as described above, in existing Subchapter R, as new §§65.550, 65.551, 65.552, 65.556, and 65.559.

The proposed rules add the new Subchapter S., Technical Requirements, which encompasses all existing sections from §65.605 to §65.615, the end of the boiler rules. These sections were formerly in Subchapter R. They are not renumbered and proposed changes to some sections are described in the following.

The proposed rules amend §65.607, Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators; §65.608, Unfired Steam Boilers; §65.609, Process Steam Generators; and §65.611, Heating Boilers, to correct cross-references and to make nonsubstantive edits.

The proposed rules amend §65.612, Repair and Alterations, to add requirements for replacing and plugging boiler tubes on certain boilers and to add qualifications for persons performing the activities, to ensure safety. Renumbering and nonsubstantive edits are also made in the section.

The proposed rules amend §65.614, Authority to Set and Seal Safety Appliances, to make nonsubstantive edits.

FISCAL IMPACT ON STATE GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be no reduction in costs to the state government to administer and enforce the rules. However, increases in costs and revenue are expected, as is a loss of revenue to the state.

The proposed change to assessing late inspection fees would entail a one-time programming cost for the boiler tracking and billing system used by TDLR to automatically assess the fee. The estimated hourly cost for programming is approximately \$190.00 and the system provider estimates 90 hours of work to complete that programming, so the cost would be \$17,100.

A loss of revenue is expected primarily from the removal of the previous method of assessing late fees. Currently, boiler owners and operators who do not have the boiler inspected before the expiration date of the current certificate of operation are assessed late fees as provided under 16 Texas Administrative Code §60.83, in which the late fee is one and one-half times the regular fee if the certificate is expired 90 days or less, and two times the regular fee if the certificate is expired more than 90 days. Boiler owners and operators have paid an average of approximately \$188,000 in late fees each year of the past five years. The current method of charging late fees is repealed by the proposed rules, so there will be an approximate loss of \$188,000 in revenue each year for the next five years. The proposed rules also remove TDLR's practice of referring any uninspected boiler that is more than 90 days past the certificate expiration date to an Authorized Inspection Agency for completion of the past due inspection. The referral fee of \$260 therefore is also removed. Boiler owners and operators have paid an average total of approximately \$3,800 in referral fees each year of the past five years.

The proposed rules repeal the fee for the reissuance of an inspector commission when an inspector changes employers. The fee for the reissuance of the commission is \$50, and TDLR has averaged three requests per year for the past five years. Total revenue lost would be \$150 per year.

A person without a National Board 360 certification is no longer required to first obtain a letter of recognition and pay a \$100 fee each year to be registered with the Department as an Authorized Inspection Agency. No agencies without this certification have applied for a registration in the past five years and it is not anticipated that one will apply in the next five years, so there is no loss of revenue from the elimination of this fee.

The total revenue loss will be approximately \$191,950 each year for the next five years.

The new method for assessing late inspection fees is also expected to create an increase in revenue to the state. The proposed rules establish a modest late inspection fee that is charged each day after the certificate has expired. The amount of the daily fee assessed increases at 31 days and then again at 61 days after the certificate's expiration date if the boiler remains uninspected. Additionally, the proposed rules make an Authorized Inspection Agency that issues an insurance policy for a boiler responsible for the timely inspection of that boiler, and subject the AIA to the same late inspection fees as a boiler owner or operator who does not timely get the required inspection. AIAs have not previously had to pay late inspection fees.

Because the new way of assessing fees will have the potential to be more costly to boiler owners and operators who fail to get their boilers inspected before the expiration of the current certificate, it is believed that owners and operators will be more likely to get the required inspections before the certificate of operation expires and will be less likely to delay inspection indefinitely after expiration. However, it is unknown how many boilers that might have gone uninspected in the past will receive untimely inspections under the new method of assessing fees. It is expected that owners, operators, and AIAs will try to avoid subjecting themselves to late inspection fees, but those who incur the fee could accrue larger late fees in shorter amounts of time. There is no data on which to base an estimate and therefore the amount of any increase in revenue caused by the proposed method of assessing late inspection fees cannot be estimated at this time.

Because the current method of charging late fees results in many delayed inspections, owners and operators have benefitted from having gaps in time between the expiration of the certificate of operation and the issuance of the new certificate of operation. A new certificate is issued only upon the completion of the required inspection regardless of when the prior certificate expired. The revised method of assessing late inspection fees is predicted to result in timely issuance of more certificates of operation due to the lost incentive for owners and operators to delay inspections past the certificate expiration date. The lost benefits of delay for owners and operators will accrue to the Department in timely fee payment and to the public in increased safety, but again, are not subject to specific quantification or prediction.

FISCAL IMPACT ON LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue or increase in costs, and thus, no foreseeable implications relating to costs or revenues of local governments as a result

of enforcing or administering the proposed rules. Local governments are not responsible for administering the state regulation of boilers. However, the requirement for owners and operators to install blowdown equipment where none currently exists or is not functioning will allow local governments to avoid potential damage to drainage and sewer systems. The associated costs of repair or replacement due to control of the temperature and pressure of boiler fluids entering those systems are expected to be reduced or avoided by the use of blowdown equipment but are not subject to estimation.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be primarily safety-related. The proposed rules reemphasize that boiler owners, operators, and Authorized Inspection Agencies, which issue insurance policies for boilers, are responsible for ensuring that a boiler is inspected before the expiration of the current certificate of operation - the primary way to ensure that boilers are in compliance and will keep operating safely, to the benefit of the public.

The proposed rules amend requirements for boiler blowdown equipment and procedures, which will ensure that boilers are operating efficiently by reducing buildup of sediment, saving owners and operators additional maintenance costs and making boilers safer. The requirement will also ensure that all boilers comply with the requirement of the Uniform Plumbing Code, and thereby the Plumbing License Law, that prohibits water having excessive temperature or pressure from being discharged directly into a drainage system, which is detrimental to the system. The avoided cost of repair to public drainage systems is a benefit to the local public.

The proposed rules amend requirements for carbon monoxide detectors, authorizing owners or operators of boilers to choose to remotely monitor them for the presence of carbon monoxide above 50 ppm in the boiler room. When remotely monitored, the detector must be set to alert personnel if the 50 ppm threshold is reached but will not force an automatic shutdown until and unless the carbon monoxide concentration reaches 200 ppm. This option provides owners and operators time to correct problems and avoid the sometimes enormous costs involved when a boiler is taken out of operation, by allowing the cause of the rise in carbon monoxide emissions to be addressed before the boiler is automatically shut down.

The proposed rules add other amendments to ensure the safe operation of boilers, including the requirement for certain boilers to follow the National Fire Protection Association Code book 85; procedures for the replacement and plugging of boiler tubes in certain fire tube boilers; requirements for boiler installation procedures and the prohibition on boiler installation by inspectors to avoid conflict of interest; necessary improvements in physical facilities that pose a risk to inspectors; a new requirement for the carbon monoxide detector in a boiler room to have a visual display indicating the current level of carbon monoxide present in the room; and the addition of new requirements for certain notifications to TDLR and for recordkeeping.

The proposed rules change the method by which late fees are assessed for boilers that are not inspected when the current certificate of operation has expired. The late fees associated with the lack of inspection could and probably would be substantially higher when a boiler is allowed to remain uninspected. This increase in fees should induce owners and operators to have their boilers inspected timely to avoid these discretionary fees, thereby helping to ensure the continuing safe operation of boilers.

The proposed rules add requirements for the boiler and its related equipment to be in a safe condition for access and inspection. This will keep inspectors and maintenance personnel safe in the performance of their duties. A person without a National Board 360 certification is no longer required to first obtain a letter of recognition and pay a fee each year to be registered with the Department as an Authorized Inspection Agency. The proposed rules make several other additions and amendments, all of which are intended to ensure the continued safe operation of boilers in Texas, a benefit to the public. Some changes allow for cost savings and increase flexibility for boiler owners and operators, inspectors, and Authorized Inspection Agencies, but none of these changes compromise safety.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be a reduction in costs (savings) to persons who are required to comply with the proposed rules. Savings are expected primarily from the removal of the previous method of assessing late fees. Boiler owners and operators who do not have the boiler inspected before the expiration date of the current certificate of operation are assessed late fees as provided under 16 Texas Administrative Code §60.83, in which the late fee is one and one-half times the regular fee if the certificate is expired 90 days or less, and two times the regular fee if the certificate is expired more than 90 days. Boiler owners and operators have paid an average of approximately \$188,000 in late fees each year of the past five years. The current method of charging late fees is repealed by the proposed rules, so owners and operators will avoid paying approximately \$188,000 in late fees each year for the next five years. The proposed rules also remove TDLR's practice of referring any uninspected boiler that is more than 90 days past the certificate expiration date to an Authorized Inspection Agency for completion of the past due inspection. The referral fee of \$260 therefore is also removed. Boiler owners and operators have paid an average total of approximately \$3,800 in referral fees each year of the past five years and will save approximately this amount.

The proposed rules repeal the fee for the reissuance of an inspector commission when an inspector changes employers. The fee for the reissuance of the commission is \$50, and TDLR has averaged three requests per year for the past five years, so savings will be approximately \$150 per year.

The total savings to the regulated community will be approximately \$191,950 each year for the next five years.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. However, the amount of additional costs are not predictable because they depend on individual compliance

choices and equipment needs, and the deterrence effect of the new late inspection fee.

Almost all, if not all, carbon monoxide detectors have the ability to remotely alert personnel that the level of carbon monoxide present in a boiler room has exceeded 50 ppm. The detector needs to be connected to wi-fi and the alert system needs to be monitored by personnel ready to react to an alert. The cost to obtain a detector that has the ability to remotely alert personnel is comparable to one that does not, and the cost to connect the detector to wi-fi is minimal, if any. There could be a larger cost to have personnel watchful for alerts at all hours, but the cost for this would vary by boiler owner and how the owner weighs the cost of earlier, automatic shutdown at 50 ppm as opposed to remote monitoring and additional time to act to avoid automatic shutdown at 200 ppm. The choice to use remote monitoring of a boiler is not a requirement for any owner.

Almost all, if not all, carbon monoxide detectors have a display that indicates the current level of carbon monoxide present in the boiler room. The cost to obtain a detector that has a display is comparable to one that does not, and the cost to replace a detector without a display is minimal.

The proposed rules require a power boiler to pass blowdown water through an approved blowdown separator or blowdown tank to cool the blowdown water to less than 140° Fahrenheit so that it may be legally discharged into a drainage system. Any power boiler that does not currently have a blowdown separator or blowdown tank but discharges into a sanitary sewer will need to have the required equipment installed. The cost for this could be from \$1,000 to \$5,000 per boiler for equipment and installation, depending on the type of equipment purchased and the size and type of the power boiler.

The proposed rules add the requirement for certain boilers to follow the National Fire Protection Association Code book 85. These types of boilers already comply with the codebook, so there is no cost to these boiler owners.

The proposed rules add requirements for the replacement of boiler tubes in certain fire tube boilers, designating the material the replacement tubes must be made of, and allowing only qualified and authorized persons to replace the tubes. The cost of complying with these new requirements cannot be determined due to the variety and differing costs of replacement tubes, and the variety and differing costs of persons authorized to perform replacements. The increase in boiler safety and the reduced possibility of damage or failure of boilers is not subject to specific determination.

Corrosion-resistant tags or decals required by the proposed rules are already issued by TDLR at no cost for boilers that need them.

The proposed rules change the method by which late fees are assessed for boilers that are not inspected when the current certificate of operation has expired. The late fees associated with the lack of inspection could and probably would be substantially higher when a boiler is allowed to remain uninspected. The proposed rules also specify that an Authorized Inspection Agency is subject to the same late fees if it fails to inspect a boiler it is required to inspect. It is unknown how many owners, operators, or agencies will be liable for the new late fees, given that the fees would accrue more quickly and in greater amounts than under the current late fee structure, or how much cost there would be for those liable. However, no person or entity is subject to paying this fee if the boiler is inspected timely. Persons and entities

who comply with inspection requirements will have no additional costs.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be an adverse economic effect on small businesses or micro-businesses as a result of the proposed rules. Because the agency has determined that the proposed rule will have an adverse economic effect on small businesses or micro-businesses, the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code §2006.002.

Approximately 864 locations in Texas have power boilers and might be considered a small or micro-business. TDLR does not collect information from license applicants or license holders about numbers of employees or gross receipts and is therefore unable to determine a reliable number of those businesses. Many of those boilers probably do not have blowdown separators or tanks and would need to install the equipment. A cost of \$1,000 to \$5,000 could possibly have an adverse economic effect on some small or micro-businesses that have a small profit margin or are having financial difficulties keeping the business operating. The Department is proposing to delay the effective date of this requirement for six months past the adoption date of the rule to provide time to prepare and budget for the cost.

No other costs associated with the proposed rules will have an adverse economic effect on any small or micro-business. The proposed rules have no anticipated adverse economic effect on rural communities because the rules will not decrease the number of boilers or businesses that use boilers in rural communities, nor will the rules increase the cost of the services from businesses that operate boilers in rural communities.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules have a fiscal note that imposes a cost on regulated persons; however, the proposed rules fall under the exception for rules that are necessary to implement legislation and for consistency with it, namely, the Uniform Plumbing Code and the Plumbing License Law. The rules are also necessary to protect the health, safety, and welfare of the residents of Texas by imposing necessary safety standards and procedures. (Government Code §2001.0045(c)(6), (9).) Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules require both an increase and a decrease in fees paid to the agency.

5. The proposed rules create a new regulation.
6. The proposed rules expand, limit, and repeal portions of the existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

The proposed rules implement a change in the method by which late fees are assessed and paid, but it is unknown whether the overall effect will be an increase or decrease in the amount of fees collected by the agency. The proposed rules repeal the fee associated with the referral of a boiler for which the inspection is 90 days past due to an Authorized Inspection Agency to conduct an inspection.

The proposed rules expand an existing regulation by adding prohibitions on who can install boilers; making Authorized Inspection Agencies subject to late inspection fees; adding requirements for remote carbon monoxide level detection when the owner or operator chooses to use remote monitoring; adding general requirements for placing a boiler and related equipment in a safe condition for access and inspection; requiring that neither a boiler nor equipment are disturbed after a serious accident and requiring records for that boiler and its operation to be preserved; denoting that a boiler is presumed to be in continued operation unless it is established otherwise; adding the requirement for certain boilers to follow the National Fire Protection Association Code book 85; establishing a new method of assessing late inspection fees for a boiler that has not been inspected when the current certificate of operation has expired; adding requirements for the replacement and plugging of boiler tubes in certain fire tube boilers; and adding requirements for boiler blowdown process and equipment.

The proposed rules repeal an existing regulation by no longer requiring an Authorized Inspection Agency with NB 360 accreditation to obtain a registration from TDLR; repealing the procedure to refer a boiler for which the inspection is 90 days or more past due to an AIA to conduct an inspection; repealing the previous method of assessing late fees established under §60.83; and repealing the requirement for a fee to be paid for the reissuance of a commission when an inspector changes employers.

TAKINGS IMPACT ASSESSMENT

The Department 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 his or her 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 Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.2. Definitions.

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

(1) Alteration--A change in the item described on the original Manufacturer's Data Report which affects the pressure containing capability of the pressure retaining item. Nonphysical changes such as an increase in the maximum allowable working pressure (internal or external [Internal or External]), increase in design temperature, or a reduction in minimum temperature of a pressure-retaining item is [shall be] considered an alteration.

(2) - (4) (No change.)

(5) Authorized Inspection Agency (AIA) (In-service)--An entity accredited by the National Board meeting NB-369, "Qualifications and Duties for Authorized Inspection Agencies Performing In-service Activities and Qualifications for Inspectors of Boilers and Pressure Vessels."[-]

(6) Authorized Inspection Agency (AIA) (New Construction--ASME Activities)--An entity accredited by the National Board meeting the qualification and duties of NB-360, "Criteria for Acceptance of Authorized Inspection Agencies for New Construction."[-]

(7) Authorized Inspector (AI)--An inspector qualified to be employed by an Authorized Inspection Agency (AIA) who holds a commission issued by the executive director.

(8) (No change.)

(9) Blowdown separator--a pressure vessel used to capture boiler blowdown water for the purpose of reducing the boiler blowdown water temperature and pressure. The cooling of the blowdown water occurs by mixing cooling water with the blowdown water.

(10) Blowdown tank--A pressure vessel used to capture boiler blowdown water for the purpose of reducing the boiler blowdown water temperature and pressure. The cooling of the blowdown water occurs over time.

(11) Blowdown water--Boiler water that contains dissolved solids and sludge.

(12) [(9)] Board--The Board of Boiler Rules.

(13) [(10)] "Boiler" means:

- (A) a heating boiler;
- (B) a nuclear boiler;
- (C) a power boiler;

(D) an unfired steam boiler; or

(E) a process steam generator.

(14) [(11)] Boiler external piping [External Piping]--The piping which begins where the ASME Code Section I or Section VIII, Division 1, 2, or 3 boiler proper or separately fired superheater terminates at:

(A) the first circumferential joint for welding end connections; or

(B) the face of the first flange in bolted flange connections; or

(C) the first threaded joint in that type of connection; and which extends up to and including the valve or valves required by ASME.

(15) [(12)] Certificate inspection [Inspection]--The required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(16) [(13)] Certificate of operation [Operation]--A certificate issued by the executive director to allow the operation of a boiler.

(17) [(14)] Changeover valve [Valve]--A valve that, which allows two redundant pressure relief valves to be installed for the purpose of changing from one pressure relief valve to the other while the boiler is operating and designed such that there is no intermediate position where both pressure relief valves are isolated from the boiler.

(18) [(15)] Chief inspector [Inspector]--The inspector appointed in accordance with Texas Health and Safety Code, §755.023.

(19) [(16)] Code--ASME Code.

(20) [(17)] Commission--The Texas Commission of Licensing and Regulation.

(21) [(18)] Competent attendant [Attendant]--An individual who has been trained to properly operate, start up, shut down, respond to emergencies and maintain control of the boiler in safe operating condition.

(22) [(19)] Condemned boiler [Boiler]--A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the executive director.

(23) [(20)] Continuous water treatment [Water Treatment]--A verifiable program that controls and limits corrosion and deposits in a boiler.

(24) [(21)] Department--Texas Department of Licensing and Regulation.

(25) [(22)] Deputy inspector [Inspector]--An inspector appointed by the executive director.

(26) [(23)] Disconnected boiler [Boiler]--A boiler in which all fuel, water, steam and electricity are removed from any connection on the boiler. These connections must [shall] provide an isolated gap and the source must [shall] be safely isolated to prevent potential leaks or electrical hazards.

(27) [(24)] Electric boiler [Boiler]--A boiler in which the source of heat is electricity, such as an electrode type boiler and an immersion resistance element type boiler.

(28) [(25)] Electrode type boiler [Type Boiler]--An electric boiler in which heat is generated by the passage of electric current using water as the conductor.

(29) [(26)] Executive director [Director]--The executive director of the department.

(30) [(27)] External inspection [Inspection]--An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(31) [(28)] Heat Recovery Steam Generator (HRSG)--A boiler which produces steam where its principle source of thermal energy is a hot gas stream having high ramp rates, such as the exhaust of a gas turbine.

(32) [(29)] Heating boiler [Boiler]--A steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(33) [(30)] High-temperature water boiler [Temperature Water Boiler]--A water boiler designed for operation at pressures exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures exceeding 250 degrees Fahrenheit (121 degrees Celsius).

(34) [(31)] Hot water heating boiler [Water Heating Boiler]--A boiler designed for operation at a pressure not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet.

(35) [(32)] Hot water supply boiler [Water Supply Boiler]--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts); water temperature exceeds 210 degrees Fahrenheit (99 degrees Celsius); or nominal water-containing capacity exceeds 120 gallons (454 Liters).

(36) [(33)] Immersion resistance element type boiler [Resistance Element Type Boiler]--An electric boiler in which heat is generated by the passage of an electric current through a resistance heating element immersed in water.

(37) [(34)] Inspection agency [Agency]--An Authorized Inspection Agency (AIA) [authorized inspection agency] providing inspection services.

(38) [(35)] Inspector--The chief inspector, a deputy inspector, or an Authorized Inspector (AI) [authorized inspector].

(39) [(36)] Install--To place, position or fit a boiler into position and then to connect, change or modify the boiler [in such a manner as] to enable [bring] the boiler to be brought into service.

(40) [(37)] Installation--The act of installing a boiler or associated equipment.

(41) [(38)] Internal inspection--A complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(42) [(39)] Maximum Allowable Working Pressure (MAWP)--The greatest pressure at which a boiler is designed to operate.

(43) [(40)] Metric (SI)--An international system of measurement.

(44) [(41)] Metrication--The process of converting between US customary units and metric (SI) units.

(45) [(42)] Modular boiler [Boiler]--A steam or hot water heating assembly consisting of a group of individual boilers called

modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(46) [(43)] Multiple pressure steam generator [Pressure Steam Generator]-A boiler consisting of several sections of heat exchange surface designed for different pressure levels.

(47) [(44)] National Board--The National Board of Boiler and Pressure Vessel Inspectors.

(48) [(45)] National Board Inspection Code (NBIC)--The manual for boiler and pressure vessel inspectors published by the National Board of Boiler and Pressure Vessel Inspectors.

(49) [(46)] Nominal--The accepted ASME standard used to designate a size or capacity of an item.

(50) [(47)] Non-code boiler [Code Boiler]-A complete boiler not constructed to the appropriate ASME Code.

(51) [(48)] Nonstandard boiler [Boiler]-A boiler that does not qualify as a standard boiler.

(52) [(49)] Nuclear boiler [Boiler]-A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(53) [(50)] Operation--The condition of a boiler in which the energy source is being applied to the boiler.

(54) [(51)] Out of service [Service]-The condition of a boiler in which it is neither in operation nor in standby.

(55) [(52)] Owner or operator [Operator]-Any person, firm, or corporation owning or operating boilers within the State of Texas.

(56) [(53)] Person--An individual, corporation, partnership, association or other legal entity.

(57) [(54)] Pool heater [Heater]-A hot water supply boiler or a potable water heater designed to provide hot water to a pool.

(58) [(55)] Portable boiler [Boiler]-A boiler primarily intended for use at a temporary location.

(59) [(56)] Potable water heater [Water Heater]-A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) and water temperatures not exceeding 210 degrees Fahrenheit (99 degrees Celsius) if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts) or nominal water-containing capacity exceeds 120 gallons (454 liters).

(60) [(57)] Power boiler [Boiler]-A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage (103 kilopascals) for a purpose external to the boiler.

(61) [(58)] Preliminary order--A written order issued by the chief inspector or any commissioned boiler inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued. The boiler inspection [Boiler Inspection] report which requires repairs to be made or the boiler operation to be ceased which is signed by the chief inspector or a commissioned boiler inspector is a Preliminary Order.

(62) [(59)] Process steam generator [Steam Generator]-An evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a process-

ing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(63) [(60)] Reinstalled boiler [Boiler]-A boiler removed from its original setting and reinstalled at the same location or at a new location [without change of ownership].

(64) [(61)] Repair--The work necessary to restore pressure-retaining items to a safe and satisfactory operating condition.

(65) [(62)] Rules--The rules promulgated and enforced by the commission in accordance with Texas Health and Safety Code, §755.032 and Texas Occupations Code, Chapter 51.

(66) [(63)] Safety appliance [Appliance]-A safety device such as a safety valve or a pressure relief valve for a boiler provided to diminish the danger of accidents.

(67) [(64)] Secondhand boiler [Boiler]-A boiler for in which the location and ownership have changed.

(68) [(65)] Serious accident [Accident]-An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located. Or, emergency medical services are dispatched to the location of a boiler accident in which one or more persons require on-site medical services, transport to a medical facility or the accident results in a fatality.

(69) [(66)] Special inspection [Inspection]-An inspection by the chief inspector or deputy inspector other than those in Texas Health and Safety Code, §§755.025 - 755.027.

(70) [(67)] Stacked boiler [Boiler]-A design in which one boiler is placed onto a rack above another boiler, as designed by the boiler manufacturer with a rack nameplate, and as approved by the department.

(71) [(68)] Standard boiler [Boiler]-A boiler that bears the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(72) [(69)] Standby--The condition of a boiler in which the owner or operator has (1) placed the boiler into operation at low fire or (2) can place the boiler into operation within 48 hours' notice.

(73) [(70)] Steam heating boiler [Heating Boiler]-A boiler designed for operation at pressures not exceeding 15 pounds per square inch gage (103 kilopascals).

(74) [(71)] System pressure [Pressure]-The pressure of the boiler system, which is governed by the highest safety valve or pressure relief valve set pressure as allowed by ASME Code and this chapter.

(75) [(72)] Texas Commission--Authorization to inspect boilers and enforce Texas Health and Safety Code, Chapter 755, and 16 Texas Administrative Code, Chapter 65, on behalf of the department.

(A) ASME Only commission [Commission]-Authorizes [Only authorizes] an inspector to conduct only ASME new construction activities.

(B) In-service only commission [In-Service Only Commission]-Authorizes [Only authorizes] an inspector to conduct only boiler in-service activities.

(C) ASME and in-service commission [In-Service Commission]-Authorizes [Only authorizes] an inspector to conduct both activities in subparagraphs (A) and (B).

(76) [(73)] Unfired steam boiler [Steam Boiler]-An unfired pressure vessel in which steam is generated. The term does not include: vessels known as evaporators or heat exchangers; or vessels in

which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

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

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Doug Jennings

General Counsel

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For further information, please call: (512) 475-4879



SUBCHAPTER B. REGISTRATION-- AUTHORIZED INSPECTION AGENCY

16 TAC §65.8

STATUTORY AUTHORITY

The proposed repeal is repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeal.

§65.8. Registration--Authorized Inspection Agency Without NB 360 Accreditation.

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

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SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION[-- REQUIREMENTS]

16 TAC §§65.12 - 65.15

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.12. Boiler Registration and Certificate of Operation Required.

(a) Except as provided by this chapter, the owner or operator of each boiler operated in this state must:

(1) register the boiler [be registered] with the department; [and]

(2) have qualified each boiler for a current certificate of operation; and [with]

(3) post the current certificate of operation [posted] in a conspicuous place on or near the boiler for which it is issued.

(b) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the person establishes to the satisfaction of the department, based on the person's records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of a certificate of operation for that boiler.

§65.13. Boiler Installation.

(a) The owner or operator of a boiler in this state must submit a boiler installation report to the department, in the manner prescribed by the department, not later than the time of completion of: [within thirty (30) days after completion of a boiler installation.]

(1) a boiler installation; or

(2) a boiler re-installation following relocation, disconnection and reconnection, or disassembly and reassembly.

(b) A boiler may not be test-fired or operated before the required first inspection unless the boiler installation:

(1) is conducted in accordance with the applicable requirements of this chapter, including but not limited to this section and §§65.50, 65.87, 65.200, 65.201, 65.204, and 65.209;

(2) the owner, operator, or boiler installer has submitted a boiler installation report to the department in the manner prescribed by the department; and

(3) a Temporary Boiler Operating Permit has been approved in accordance with subsection (c).

[(b) The boiler shall not be test-fired or operated prior to the required first inspection except as allowed under subsection (e).]

(c) Temporary Boiler Operating Permit.

(1) The owner or operator may request a Temporary Boiler Operating Permit in the manner prescribed by the department [on a department-approved form].

(2) The owner or operator must pay the applicable fee provided under §65.300.

(3) The department will not approve a Temporary Boiler Operating Permit if a boiler installation report for the boiler has not been submitted to the department in the manner prescribed by the department.

(4) [(3)] Upon approval of the Temporary Boiler Operating Permit from the department, the boiler may be operated before [prior to] the required initial inspection for up to thirty (30) days.

§65.14. *Inspector Commissions.*

(a) In-service [In-Servic] Commission. To be eligible for in-service commission, an applicant must:

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

(b) (No change.)

§65.15. *Boiler Certificate of Operation [Certification Requirements].*

(a) To be eligible for a certificate of operation, the following requirements must be met:

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

(3) required repairs completed; ~~and~~

(4) payment of fees under §65.300; ~~and~~[-]

(5) payment of due or past-due invoices associated with the boiler.

(b) - (c) (No change.)

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

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SUBCHAPTER D. AUTHORIZED INSPECTOR

16 TAC §65.25, §65.26

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.25. *Authorized Inspector--Eligibility Requirements.*

To perform work as [be] an Authorized Inspector [authorized inspector], an applicant must be an inspector in the employment of a department-registered Authorized Inspection Agency [have at least five years' experience in the constructions, installation, inspection, operation, maintenance, or repair of boilers].

§65.26. *Commission--Renewal and Reinstatement.*

(a) To renew or reinstate an Authorized Inspector [authorized inspector] commission, an applicant must:

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

(b) Non-receipt of a license or registration renewal notice from the department does not exempt a person[₃] or entity[₃] from any requirements 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.

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SUBCHAPTER F. COMMISSION CARDS

16 TAC §65.40, §65.41

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.40. *Authorized Inspector--Commission Card.*

(a) The executive director may issue a commission and an identifying commission card to an Authorized Inspector provided the inspector has successfully passed the examination as set forth in §65.14.

(b) A commission card or a digital or paper photograph or copy of the commission card issued by the department must be in the inspector's possession and readily available while conducting inspection activities within the state of Texas.

{(a) A commission as an authorized inspector and an identifying commission card may be issued by the department to a person who has met the requirements of §65.14(a) and (b).}

{(b) A commission card issued by the department shall only be used while conducting inspection activities within the State of Texas and shall be in the inspector's possession during these activities.}

(c) Written requests for renewals, and applications for new and reinstated commissions must [reinstatements shall] specify if the scope of work to be performed will be ASME Code only, in-service [~~in-service~~] only, or both.

(d) When a request is for new issuance or reinstatement as described in §65.14 and §65.26, the inspector must [shall] attend a mandatory commission approved training program before [~~prior to~~] issuance of the commission.

(e) (No change.)

(f) Within two (2) business days after an inspector's employment terminates, the Authorized Inspection Agency must notify the department in writing that the inspector no longer works for the agency.[:]

{(1) the inspection agency shall notify the department in writing that the inspector no longer works for the agency; and}

{(2) on the final day of employment with the inspection agency, the commission card issued to the inspector is void and shall not be used as authorization to perform or otherwise conduct a boiler inspection under this chapter.}

{(g) The identifying commission card shall be returned to the department by the authorized inspection agency within thirty (30) days after the inspector to whom the commission was issued is no longer employed by the department or the authorized inspection agency.}

§65.41. Reissuance of Commission Card after Reemployment.

An inspector, commissioned as provided in this subchapter, is [shall be] entitled to another commission without examination upon leaving an employer and commencing [the] employment with another employer if the inspector: [of the department and entering the employment of an inspection agency without examination; if the following requirements are met.]

(1) [The inspector] is employed by the new employer [inspection agency] within 12 months [twelve (12) months] after leaving the former employer [department];

(2) submits an application for a commission as required in this subchapter; and

{(2) A Commission application and fee required under §65.300 are submitted to the department; and}

(3) meets all [All] other requirements [have been met] for obtaining a 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.

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SUBCHAPTER H. INSPECTOR STANDARDS OF CONDUCT

16 TAC §65.50

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.50. Inspectors--Prohibited Conflicts of Interest.

(a) Inspectors may [shall] not engage in the sale of any article or device relating to boilers, pressure vessels, or [other] appurtenances.

(b) Authorized Inspection Agencies, Authorized Inspectors, and inspectors employed by the department may not install boilers.

(c) An Authorized Inspection Agency, an Authorized Inspector, or an employee of the department may not inspect a boiler installed by an Authorized Inspection Agency, by any Authorized Inspector, by a current or former Authorized Inspection Agency employer, or by the same employee of the department.

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

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SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §§65.60 - 65.63

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.60. External Inspection.

External inspections must ~~shall~~ be performed as part of the application for an extension to the inspection interval of Health and Safety Code, §755.026. Otherwise, an external inspection must ~~it shall~~ be conducted in conjunction with the annual internal inspection required in Health and Safety Code, §755.025.

§65.61. Inspection of All Boilers Required.

(a) (No change.)

(b) All boilers must receive a certificate inspection before the expiration date of the current certificate of operation.

(c) ~~[(b)]~~ Boilers ~~must~~ ~~shall~~ be inspected by the Authorized Inspection Agency ~~[inspection agency]~~ that issued an insurance policy to cover a boiler located in this state, or by an authorized representative. All other boilers ~~must~~ ~~shall~~ be inspected by the department.

(1) The Authorized Inspection Agency must conduct a certificate inspection for each boiler for which it is responsible before the expiration of the boiler's current certificate of operation.

(2) The continued operation of the boiler beyond the expiration of the certificate of operation is presumed in accordance with §65.200.

(3) The Authorized Inspection Agency listed in the department's reporting system that fails to timely inspect a boiler for which it is responsible is subject to the late inspection fee in §65.300 if the current certificate of operation expires while the Authorized Inspection Agency has inspection responsibility.

(4) The owner or operator of a boiler that does not receive a certificate inspection before the expiration of the current certificate of operation is subject to the late inspection fee in §65.300.

(5) An Authorized Inspection Agency that is denied access to a boiler for inspection purposes is not responsible for a late inspection fee under paragraph (3). A denied-access violation of §65.62(a) must be documented on the inspection report.

(d) Upon request, an Authorized Inspection Agency must provide the department documentation of the effective dates of its inspection responsibility for a boiler.

(e) Subsections (c)(3) and (c)(4) apply to boilers for which the certificate of operation expires one year or more after the adoption of the amendments to this section.

(f) ~~[(e)]~~ Except in the case of an accident or other emergency, no inspection will ~~shall~~ be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday, unless otherwise directed by the department.

~~[(d) Boilers shall be inspected prior to the expiration date of the current certificate of operation.]~~

~~[(e) Boilers not inspected prior to the expiration date of the current certificate of operation will be assessed a late fee in accordance with §65.300 and subject to penalties and sanctions as provided under this chapter.]~~

§65.62. Notice of Inspection to Owners or Operators of Boilers.

(a) All boilers, unless otherwise exempted, ~~must~~ ~~shall~~ be made available for inspection and prepared for initial inspection, regular inspections, or liquid pressure tests, whenever necessary, by the owner or operator when notified by the inspector.

(b) (No change.)

§65.63. Inspection of Portable Boilers.

The internal and external inspection of portable boilers must ~~[Portable Boilers shall]~~ occur as follows:

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

(4) Boilers designated as a nonstandard boiler ~~[Nonstandard Boiler]~~ in accordance with §65.45, ~~must~~ ~~shall~~ be inspected annually.

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

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SUBCHAPTER J. TEXAS BOILER NUMBERS

16 TAC §65.70, §65.71

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.70. Texas Boiler Numbers--Required.

(a) Each boiler must be identified with a single unique department-issued identification number displayed on a corrosion-resistant tag or decal and located on the boiler next to the ASME name plate. The decal or tag must be attached to the boiler during the first inspection and ~~shall~~ remain on the boiler for the life of the equipment.

(b) After the initial issuance of an identification number [a tag number], that [tag] number may not be reassigned or reused.

(c) - (d) (No change.)

§65.71. Texas Boiler Number--Placement on Boiler.

(a) During the first inspection of all boilers, the inspector ~~must~~ ~~shall~~ stamp the Texas boiler number, except as provided for in subsections (c) and (d), as near to the original ASME Code [eode] name plate and required information as practicable.

(b) - (d) (No change.)

(e) The following types of boilers are exempt from the stamping requirements of subsection (c), ASME Code: boilers bearing [eode]

name plates stamped with the HLW designator, cast iron sectional boilers, cast aluminum sectional boilers, water tube boilers with cast headers, and other types of boilers that will be damaged by direct impression stamping.

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

(f) (No change.)

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SUBCHAPTER K. REPORTING REQUIREMENTS

16 TAC §§65.83, 65.86, 65.87

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.83. Boiler Accidents.

(a) In case of a serious accident, the owner, operator, or Authorized Inspector must [owner/operator shall] immediately notify the chief inspector and Authorized Inspector, as applicable. [authorized inspector.]

(b) The owner or operator must ensure that neither the boiler nor any of the following is removed or disturbed, whether or not it is or was installed, in use, impacted, damaged, or functioning, except for the purpose of saving human life or preventing death or serious harm to an individual or preventing serious damage, before an inspection and investigation has been made by a department inspector:

- (1) parts of the boiler;
- (2) fuel supply equipment;
- (3) gauges, valves, meters, regulators, or cocks;
- (4) wiring, relays, switches, electrical panels, or motherboards;
- (5) ventilation equipment, structures, or fans;

(6) any other equipment serving the operation of the boiler;

(7) any matter, material, substance, equipment, part, or item related or unrelated to the operation of the boiler; or

(8) building structures, building materials, building contents, adjacent or surrounding structures or components thereof, soils, or vegetation.

~~[(b) Neither the boiler nor any of the parts thereof, shall be removed or disturbed, except for the purpose of saving human life or preventing further damage, before an inspection and investigation has been made by an inspector.]~~

~~[(e) The authorized inspector shall immediately notify the chief inspector of each boiler accident.]~~

(c) ~~[(d)]~~ The chief inspector must [shall] investigate, or cause to be investigated, each boiler accident to the extent necessary to reasonably determine the cause of the boiler accident.

(d) ~~[(e)]~~ To the extent necessary to conduct an inspection and subsequent investigation of a boiler accident, the owner or operator must [owner/operator shall] provide an inspector free access to the boiler and accident area.

(e) All records related to the boiler and the operation of the boiler must be preserved and may not be modified or destroyed.

(1) If records related to the operation or maintenance of the boiler are created or updated through electronic or automated processes, the records may not be accessed to modify, delete, or otherwise change the automated system or the records created or produced by that system.

(2) All records must be made available to the inspector or the department upon request in a readily understandable format that can be read and interpreted without the use of proprietary software, interpretation services, or other specialized processes.

(f) The owner or operator must timely [owner/operator shall] provide the chief inspector, deputy inspector and Authorized Inspector [authorized inspector,] with fragments, parts, appurtenances, documents, any items listed in subsection (b), and records necessary to conduct an investigation of the accident.

(g) The Authorized Inspector must [authorized inspector shall] submit a report of the boiler accident to the chief inspector~~[- The report shall be submitted]~~ in a manner prescribed by the department.

(h) The chief inspector must [shall] file a final report to the executive director.

§65.86. Authorized Inspection Agencies Reporting Requirements.

Authorized Inspection Agencies must notify the department within ten ~~[(10)]~~ calendar days after the loss of ASME Certificate of Authorization ~~[- NB-360 Certificate of Authorization]~~ or NB-369 Certificate of Authorization.

§65.87. Boiler Installation Reporting Requirements.

The owner or operator of a boiler or any person who installs or reinstalls a boiler in this state must file an installation report with the department by the completion of installation in accordance with §65.13.

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

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SUBCHAPTER L. RESPONSIBILITIES OF THE DEPARTMENT

16 TAC §65.90, §65.91

STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeals.

§65.90. *Commissions--Authorized Inspector.*

§65.91. *Overdue Boiler Inspection--Authorized Inspection Agency Referral.*

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

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SUBCHAPTER M. BOARD OF BOILER RULES

16 TAC §65.101

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.101. *Board of Boiler Rules--Membership; Presiding Officer.*

(a) - (d) (No change.)

(e) The chief inspector of the department serves as presiding officer of the board.

(f) A quorum of the advisory board is necessary to conduct official business.

(g) A board decision is not effective unless supported by the vote of a majority of the members present and voting.

(h) The presiding officer may not vote on board actions and may not be counted in determining whether a quorum is present.

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

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16 TAC §65.104

STATUTORY AUTHORITY

The proposed repeal is repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeal.

§65.104. *Board of Boiler Rules--Board Meetings.*

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

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SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §§65.200, 65.206, 65.217

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.200. New Boiler Installations.

(a) No boiler, except reinstalled boilers and those exempted by Texas Health and Safety Code, §755.022, may [shall] be operated [installed] in this state unless:

(1) it has been constructed, installed, inspected, and stamped in conformity with the applicable section of the ASME Code [code];

(2) it is registered with the National Board of Boiler and Pressure Vessel Inspectors except cast iron or cast-aluminum sectional boilers; and

(3) it is installed, approved, registered, and inspected in accordance with the requirements of this chapter.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be approved [accepted] by the department. Any person desiring to install such a boiler must [shall] file a written request for approval to install and for a special inspection [complete application for the installation of the boiler in compliance with §65.13].

(c) New boilers and, including reinstalled boilers must, shall be installed in accordance with the requirements of the latest revision of the applicable section of the manufacturer's recommendations, the ASME Code, the Act, [ASME code] and this chapter. These boilers must [shall] be inspected before [prior to operation] test-firing or operation in accordance with §65.13 and all applicable rules.

(d) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the person establishes to the satisfaction of the department, based on the person's records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of the certificate of operation for that boiler.

§65.206. Boiler Room.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced must [shall] be equipped with a carbon monoxide detector with a manual reset.

(1) The carbon monoxide detector must have a display that indicates the current level of carbon monoxide in parts per million (ppm) present in the boiler room.

(2) [(4)] The carbon monoxide detector and boiler(s) must [shall] be interlocked to disable the burners when the measured level of CO rises above 50 ppm.

(3) The owner or operator may choose to use a remote monitoring system. When the CO detector is remotely monitored:

(A) it must be set to alarm personnel at the boiler location and at the remote location at a measured level of 50 ppm of CO;

(B) the alarm at the boiler location must not be capable of being disabled until the measured level of CO falls below 50 ppm; and

(C) the detector must be interlocked to disable the burners when the CO level in the boiler room reaches a measured level of 200 ppm.

(4) [(2)] The carbon monoxide detector must [shall] disable the burners upon loss of power to the detector.

(5) [(3)] The carbon monoxide detector must [shall] be calibrated in accordance with the manufacturer's recommendations or every eighteen months after installation of the detector, whichever is less. A record of calibration must [shall] be posted at or near the boiler, or be readily accessible to an inspector.

(6) [(4)] The requirements in this subsection apply to boiler rooms in which new installations or reinstallations of one or more boilers are completed on or after September 1, 2020.

(b) - (h) (No change.)

§65.217. Variance.

(a) (No change.)

(b) In evaluating a request for variance, the department must [shall] consider whether the variance would be in the public interest, and may consider factors such as the effect of the proposed variance on the public, the burden that compliance imposes on the owner or operator [Owner or Operator], and whether the owner or operator [Owner or Operator] has in place a maintenance plan that promotes boiler safety.

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

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SUBCHAPTER O. FEES

16 TAC §65.300

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to

adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.300. Fees.

(a) Certificate of operation. The owner or operator must ~~[shall]~~ make payment for the following fees:

(1) Initial certificate of operation--\$70.

(2) Subsequent certificate of operation--\$70. Any amounts due or past due for any invoices associated with the boiler must also be paid.

~~[(1) On or before expiration date--\$70; in addition to all outstanding invoices, including any past due invoices associated with the boiler.]~~

~~[(2) After expiration date--Late fees for certificates are provided for under §60.83 of this title (relating to Late Renewal Fees).]~~

(3) Duplicate certificate of operation--\$25

(b) - (c) (No change.)

(d) Commission Fees. The Authorized Inspector seeking or holding the commission must ~~[Commission shall]~~ make payment for the following fees:

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

(4) Duplicate commission card--\$25

~~[(5) Reissuance of card after re-employment--\$50]~~

(5) ~~[(6)]~~ Late renewal fees for commissions issued under this chapter are provided under §60.83 [of this title (relating to Late Renewal Fees)].

(e) Authorized Inspection Agency Letter of Recognition. The Authorized Inspection Agency must pay ~~[shall make payment for]~~ the following fees:

(1) Initial application [Application]--\$100

(2) Renewal application [Application]--\$100

(f) - (h) (No change.)

(i) Boiler Installation Report Filing [Reports]. The owner or operator must [shall] make a \$25 fee payment. The boiler installer, if a different person than the owner or operator, is not responsible for the boiler installation report filing fee unless otherwise agreed.

~~[(j) Overdue Boiler Inspection Fee. The owner or operator shall make a \$260 fee payment to the agency assigned by the department in accordance with §65.91.]~~

(j) ~~[(k)]~~ Temporary Boiler Operating Permit Fee. The owner or operator must [shall] make a \$50 fee payment.

(k) Late Inspection Fee--A late inspection fee will be assessed as follows to the owner or operator and the Authorized Inspection Agency, as applicable, for inspections conducted after the expiration of the current certificate of operation.

(1) \$25 per day for each day after the expiration date of the certificate of operation until the 30th day after expiration of the certificate of operation;

(2) \$50 per day for days 31 to 60 after expiration of the certificate of operation; and

(3) \$100 per day for day 61 after expiration of the certificate of operation and for each day of noncompliance thereafter.

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SUBCHAPTER P. ADMINISTRATIVE PENALTIES AND SANCTIONS

16 TAC §65.401

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.401. Sanctions.

(a) If a boiler has not been properly prepared for an internal inspection or a liquid pressure test as required by the Act and this chapter [boiler law and rules], the inspector may decline to make the inspection or witness the test~~;~~ and the certificate of operation shall be withheld until the owner or operator complies with all requirements. Late certificate of operation fees shall apply if the boiler is not inspected prior to the expiration date of the certificate of operation].

(1) The certificate of operation will be withheld until the owner or operator complies with all requirements.

(2) A late inspection fee in accordance with §65.300 must be paid if the boiler is not inspected before the expiration date of the certificate of operation.

(b) (No change.)

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SUBCHAPTER R. BASIC TECHNICAL REQUIREMENTS

16 TAC §§65.550 - 65.552, 65.555, 65.556, 65.559, 65.560

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.550. Conditions Not Covered by Rules.

(a) Any owner or operator of boilers or any deputy inspector, Authorized Inspector, or interested party, may submit in writing an inquiry to the department for an opinion or clarification.

(b) All conditions not specifically covered by these requirements must be treated as new installations or be referred to the chief inspector for instruction.

§65.551. General Safety.

(a) The owner or operator must place a boiler and its related equipment in a safe condition for access and inspection. A boiler inspector is not required to perform an inspection if:

(1) A boiler, its related equipment, or the facility is not in compliance with applicable minimum federal, state, or local safety standards; or

(2) Unsafe conditions, including obstructed entry or exit, unsafe flooring or walking surfaces, inadequate space for conducting the inspection, inadequate lighting, or other unsafe conditions, hazards, or safety risks are present.

(b) A determination by an inspector that an inspection cannot be conducted safely is final.

(c) A boiler that is deemed unsafe for operation by the inspector will be removed from service or placed in a safe condition in the following manner:

(1) The inspector must notify the owner or operator about:

(A) the prohibition against operating an unsafe boiler;

(B) insurance policy provisions, if any, that may exclude insurance coverage for operating an unsafe boiler;

(C) possible administrative penalties for operating an unsafe boiler; and

(D) the department's authority to follow a request for the immediate but voluntary shut-down of the boiler with formal action to prohibit continued operation of the boiler.

(2) If the owner or operator refuses to immediately shut the boiler down upon the request of the inspector, before leaving the premise on which the unsafe boiler is located the inspector must notify the chief inspector about the condition of the unsafe boiler.

(d) Upon receipt of the notice required by paragraph (c)(2), the chief inspector must assign a deputy inspector to confirm that an unsafe condition exists and, if confirmed, to declare the boiler unsafe for operation by placing a red tag on the boiler prohibiting continued operation of the boiler.

(e) The continued operation of an unsafe boiler subjects the owner or operator to administrative penalties as provided for in this chapter.

§65.552. Chimneys and Vents.

All chimneys and vents must be installed in accordance with boiler manufacturer recommendations and chimney/vent manufacturer recommendations.

§65.555. Boiler Blowdown.

(a) Blowdown water from power boilers must pass through an approved blowdown separator or blowdown tank when entering a sanitary sewer.

(b) The temperature of the blowdown water leaving the blowdown separator or blowdown tank must not exceed 140 degrees Fahrenheit.

(c) The pressure of the blowdown water leaving a blowdown separator or blowdown tank must not exceed 5 PSIG.

(d) All blowdown piping and fittings must meet requirements set forth in ASME Piping Code B31.1, Power Piping.

(e) A blowdown separator must be fitted with threaded or flanged openings to facilitate inspection. A blowdown tank must be fitted with a manway for cleaning and inspection.

(f) The vent and drain of the blowdown separator or blowdown tank must be piped to a safe point of discharge.

(g) A blowdown separator or blowdown tank, when required by this chapter, must:

(1) be constructed in accordance with ASME Boiler and Pressure Vessel Code, Section VIII Division 1;

(2) have a minimum design pressure equal to the recommended pressure of the boiler manufacturer for the boiler to which the tank or separator is connected; and

(3) be registered with the National Board of Boiler and Pressure Vessel Inspectors.

(h) Installation or modification of equipment to achieve compliance with this section is required to be completed no later than six months after the adoption of the requirements of this section.

§65.556. Boiler Room Ventilation.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(b) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans as provided below.

(1) For a single unobstructed opening, the opening must be sized on the basis of one square inch (645 square millimeters) of free area for each 2,000 Btu/hour (.586 kilowatts) input of the combined burners located in the boiler room.

(2) For two unobstructed openings, one commencing not more than 12 inches (304.8 millimeters) from the ceiling of the room and one commencing not more than 12 inches (304.8 millimeters) from the floor of the room, the opening must be sized on the basis of one square inch (645 square millimeters) of free area for each 3,000 Btu/hour (.879 kilowatts) input per opening of the combined burners located in the boiler room.

(3) The power ventilator or fans must be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fans must be interlocked to disable the burners unless a supply of combustion, ventilation, and dilution air in accordance with the boiler manufacturer's recommendations is maintained.

(4) Power ventilators or fans designed to maintain pressure in the boiler room must be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fan control must be interlocked to disable the burners unless a supply of combustion, ventilation and dilution air in accordance with the boiler manufacturer's recommendations is maintained.

(c) Boilers of a sealed combustion design by the manufacturer.

(1) When a boiler(s) in the boiler room is of a sealed combustion design by the manufacturer of the boiler and pulls air for combustion from outside of the building, ventilation of the boiler room is not required.

(2) When the boiler room is configured to include both designs, i.e. a boiler(s) of a sealed combustion design by the manufacturer of the boiler that pulls air for combustion from outside of the building and a boiler(s) that is not of a sealed combustion design by the manufacturer of the boiler, the boiler room must meet the ventilation requirements in subsection (b) only for the boiler(s) that are not of the sealed combustion design that pull air from outside of the building.

§65.559. Location of Discharge Outlets.

Pressure relief valve, blowdown pipes, and other outlets must be discharged to a safe point.

§65.560. Boiler and Combustion Systems Hazards Code.

National Fire Protection Association (NFPA) Code Book 85 must be followed for the following types of boilers.

(1) Single burner boilers, multiple burner boilers, stokers and atmospheric fluidized bed boilers with a fuel input of 3.7 MW (12.5 million Btu/hr) or greater.

(2) Pulverized fuel systems at any heat input rate.

(3) Fired or unfired steam generators used to recover heat from combustion turbines and other combustion turbine exhaust systems at any heat input.

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SUBCHAPTER R. TECHNICAL REQUIREMENTS

16 TAC §§65.600 - 65.604

STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeals.

§65.600. Conditions Not Covered by Rules.

§65.601. General Safety.

§65.602. Chimneys and Vents.

§65.603. Boiler Room Ventilation.

§65.604. Location of Discharge Outlets.

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SUBCHAPTER S. TECHNICAL REQUIREMENTS

16 TAC §§65.607 - 65.609, 65.611, 65.612, 65.614

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.607. Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators.

(a) Safety valves and pressure relief valves.

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

(5) Except for changeover valves as defined in §65.2(17)(14), other valve(s) must [shall] not be placed:

(A) - (B) (No change.)

(6) - (9) (No change.)

(10) If a muffler is used on a pressure relief valve, it must [shall] have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve. Mufflers must [shall] not be used on high-temperature water boilers [High-Temperature Water Boilers].

(11) - (14) (No change.)

(b) - (c) (No change.)

(d) Low-water fuel cutoff and water feeding devices.

(1) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, must [shall] be equipped with approved low-water fuel cutoffs.

(A) - (C) (No change.)

(D) For high-temperature water boilers [High-Temperature Water Boilers] requiring forced flow circulation, an approved flow sensing device must [shall] be installed on the outlet, as close to the boiler as possible.

(2) - (4) (No change.)

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

(i) Provisions for thermal expansion for high-temperature water boilers. [High-Temperature Water Boilers.]

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

§65.608. Unfired Steam Boilers.

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

(c) Safety valves and pressure relief valves.

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

(3) Each ASME Code, Section I, unfired steam boiler must [shall] have one safety valve and if it has more than 500 square feet (47 square meters) of bare tube water heating surface, it must [shall] have two or more safety valves.

(A) (No change.)

(B) Valves, except a changeover valve as defined in §65.2(17)(14), must [shall] not be placed between the required safety valve or pressure relief valve or valves and the boiler nor on the

discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4) - (6) (No change.)

(d) - (e) (No change.)

(f) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner or operator [owner/operator] is responsible for the design and installation of any low water protection devices as required to prevent damage to the unfired steam boiler. All installed low water cutoffs, alarms and feeding devices must [shall] be designed for pressure and temperature equal to or greater than the MAWP of the unfired steam boiler.

(2) - (3) (No change.)

(g) - (h) (No change.)

§65.609. Process Steam Generators.

(a) Some process steam generators referred to in §65.2[5] are shown in §65.615, Exhibits 4 and 5.

(b) (No change.)

(c) When the owner or operator [owner/operator] elects to construct a process steam generator to ASME Code, Section I, the limits as shown in §65.615, Exhibits 4 and 5, are as defined in the rules of ASME Code, Section I.

(d) Safety valves and pressure relief valves.

(1) (No change.)

(2) Each ASME Code, Section VIII, Division 1 or Division 2, steam collection or liberation drum of a process steam generator, must [shall] have at least one safety valve designed for steam service in accordance with applicable ASME Code of Construction. The valve body drain must [shall] be open and piped to a safe point of discharge.

(A) The installation of full-area stop valves between the steam collection or liberation drum of a process steam generator and the safety valve is permitted as depicted in §65.615, Exhibits 4 and 5. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves must [shall] be car sealed or locked in the open position.

(B) One or more safety valves on every steam collection or liberation drum of a process steam generator must [shall] be set at or below the MAWP. The remaining valves, if any, must [shall] be set within the range specified and have the capacity required by the applicable ASME Code [eode].

(3) Each ASME Code, Section I, process steam generator, must [shall] have one safety valve and if it has more than 500 square feet (47 square meters) of bare tube water heating surface, it must [shall] have two or more safety valves. ASME Code, Section I, safety valves must [shall] be applicably stamped.

(A) (No change.)

(B) No valves, except as defined in §65.2(17)(14), of any description may [shall] be placed between the required safety valve or pressure relief valve or valves and the steam collection or liberation drum, nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4) - (6) (No change.)

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

(g) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner or operator [~~owner/operator~~] is responsible for the design and installation of any low water protection devices as required, to prevent damage to the process steam generator. All installed low water cutoffs, alarms and feeding devices, must [shall] be designed for a pressure and temperature equal to or greater than the MAWP and temperature of the process steam generator steam collection or liberation drum.

(2) - (3) (No change.)

(h) Pressure gages.

(1) (No change.)

(2) Each steam collection or liberation drum of a process steam generator must [shall] have a valved connection at least 1/4 inch nominal pipe size (8 mm)[~~5~~] connected to the steam space for the purpose of attaching a test gage when the process steam generator is in service, to test the accuracy of the pressure-indicating device.

(i) (No change.)

§65.611. *Heating boilers.*

(a) Steam Heating Boilers.

(1) Safety valves.

(A) Each steam boiler must [shall] have one or more safety valves, that are identified with applicable designator with the ASME certification mark [~~Certification Mark~~] of the spring pop type, adjusted and sealed to discharge at a pressure not to exceed 15 psig (103 kilopascals). Seals must [shall] be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves must [shall] be arranged so that they cannot be reset to relieve at a higher pressure than the MAWP of the boiler. A body drain connection below seat level must [shall] be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain hole or holes must [shall] be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole must [shall] not be less than 1/4 inch (6 mm) in diameter.

(B) - (G) (No change.)

(2) - (8) (No change.)

(b) Hot Water Heating Boilers.

(1) Pressure relief valves.

(A) Each hot water heating boiler must [shall] have at least one pressure relief valve, of the automatic reseating type, identified with the ASME certification [~~Certification~~] mark with the "V" or "HV" designator ASME Code Symbol, and set to relieve at or below the MAWP of the boiler.

(B) - (J) (No change.)

(2) - (3) (No change.)

(4) Pressure and temperature [Temperature] gages.

(A) - (D) (No change.)

(5) - (7) (No change.)

(8) Piping, fittings, and valves [Fittings and Valves].

(A) - (B) (No change.)

(c) Hot Water Supply Boilers.

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

(4) Pressure and temperature [Temperature] gages.

(A) - (D) (No change.)

(5) - (7) (No change.)

(8) Piping, fittings, and valves [Fittings and Valves].

(A) - (B) (No change.)

(d) Potable Water Heaters (ASME Code HLW).

(1) Pressure relief valves.

(A) Potable water heaters (tank type) must [shall] have at least one officially rated temperature and pressure relief valve, or one officially rated pressure relief valve, set to relieve at or below the maximum allowable pressure of the heater. No pressure relief valve may [shall] be smaller than 3/4 inch nominal pipe size (20 mm). The valve(s) must [shall] be marked with the Code Symbol "V" or "HV."~~[]~~ At no time may [shall] the temperature probe of the temperature and pressure relief valve be removed or modified.

(B) - (G) (No change.)

(2) - (7) (No change.)

(8) Piping, fittings, and valves. [Fittings and Valves.]

(A) - (B) (No change.)

§65.612 *Repairs [Repair] and Alterations.*

(a) Repairs and alterations must [shall] conform to the current edition of the National Board Inspection Code (NBIC) and must [shall] be acceptable to the inspector, except that repairs and alterations may be performed by the following, provided the intended work is within the scope of the issued certificate of authorization:

(1) (No change.)

(2) owners or operators [owners/operators] of boilers who have been issued a certificate of authorization by the department.

(A) Issuance of the certificate of authorization will be made upon submission of an application in the manner prescribed [; on forms provided] by the department.

(B) (No change.)

(b) Derating a boiler's MAWP and/or allowable temperature (in accordance with the NBIC), must [shall] be approved by the department before [prior to] commencement of the alteration. If the derating is approved, the MAWP and/or allowable temperature may [shall] not be increased without prior approval from the department.

(c) Non-welded repairs.

(1) (No change.)

(2) Replacement parts fabricated by welding must [shall] be certified, stamped with the appropriate ASME Code symbol and inspected by an Authorized Inspector [authorized inspector] as required by the ASME Code.

(3) - (6) (No change.)

(d) (No change.)

(e) Replacement of boiler tubes in a fire tube boiler fabricated in accordance with ASME Code Section I or IV.

(1) The following are alterations:

(A) Replacing a mechanically expanded boiler tube with a welded boiler tube.

(B) Replacing a welded boiler tube with a mechanically expanded boiler tube.

(2) Only a person qualified and authorized under subsections (a)(1) or (a)(2) may replace welded or mechanically expanded boiler tubes.

(3) Replacement tubes must be made of a material that is the same as or is compatible with the material of the boiler tube being replaced and must be welded or mechanically expanded into the tube sheet or drum.

(f) ~~[(e)]~~ Plugging of boiler tubes (excluding tubes in headers of economizers, evaporators, superheaters, or reheaters).

(1) Tube plugs must [shall] be made of a material which is compatible with the material of the boiler tube being plugged and must [shall] be welded into place~~;~~ or manufactured to be mechanically expanded into the tube sheet or drum.

(2) Plugging boiler tubes on fire tube boilers [Fire Tube Boilers] fabricated in accordance with ASME Code Section I or IV. Best practice is not to plug a boiler tube in a fire tube boiler [Fire Tube Boiler]. If a fire tube boiler [Fire Tube Boiler] tube is plugged, the following conditions [criteria shall] apply.

(A) Only a person qualified and authorized under subsections (a)(1) or (a)(2) may plug boiler tubes.

(B) ~~[(A)]~~ Plugging boiler tubes that are adjacent to another plugged boiler tube is prohibited.

(C) ~~[(B)]~~ No more than 10% of the total number of boiler tubes may [shall] be plugged.

(D) ~~[(C)]~~ All non-expanded boiler tube plugs must [shall] be welded into place.

(E) ~~[(D)]~~ All plugged boiler tubes must [shall] be replaced before [prior to] the next required certificate inspection [Certificate Inspection].

(3) Plugging boiler tubes on water tube boilers, unfired boilers, or process steam generators [Water Tube Boilers, Unfired Boilers, or Process Steam Generators].

(A) No more than 10% of the boiler generating tubes may be plugged. Additional tubes may be plugged after approval is obtained from the Original Equipment Manufacturer or an engineer [Engineer] experienced in boiler design. The scope of the approval is limited to the plugging of the tubes and must [shall] consider the operational effect on the water side pressure boundary or membrane and the effect on the combustion process throughout the boiler.

(B) No water wall [Water Wall] tubes may be plugged, where the tube forms a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple (gas) pass boiler.

§65.614. Authority to Set and Seal Safety Appliances.

(a) All safety and pressure relief valves for ASME Code Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the organizations listed in this section, provided the scope of the issued certificate of authorization covers the work to be performed.

(b) The following organizations are authorized to set and seal safety appliances:

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

(3) an organization holding a valid owner or operator [owner/operator] certificate of authorization issued by the department to repair, test, set and seal safety appliances for boilers meeting the requirements of this chapter only at the approved owner or operator

[owner/operators] facilities. Such authorization may be granted or withheld by the department.

(A) If authorization is granted and proper administrative fees as provided for in §65.300~~;~~ are paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate will [shall] indicate authorization to repair ASME Code Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual.

(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six ~~[(6)]~~ months before [prior to] the date of expiration.

(C) The owner or operator [owner/operator] certificate of authorization is renewable every three ~~[(3)]~~ years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector. Original code books and the National Board's Pressure Relief Device Certifications (NB-18), as required to set and seal safety appliances, must [shall] be available during the review of the quality control system.

(D) Before the owner or operator [owner/operator] certificate of authorization may be issued or renewed, two valves that [which] have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) - (iv) (No change.)

(E) (No change.)

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner or operator [owner/operator] facilities without the use of mobile facilities. Organizations that obtain the owner or operator [owner/operator] certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and pressure relief valves provided that:

(i) - (iii) (No change.)

(G) - (I) (No change.)

(J) In general, the quality control system must [shall] describe and explain what documents and procedures the owner or operator [owner/operator] will use to validate a valve repair. Before issuance or renewal of the owner or operator [owner/operator] certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system are [shall be] those described in §65.615, Exhibit 9.

(i) - (iii) (No change.)

(K) It is essential that owner or operator [owner/operator] valve repair organizations ensure that personnel making repairs to safety and pressure relief valves are knowledgeable and qualified. The owner or operator must [owner/operator shall] provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) - (iii) (No change.)

(L) - (M) (No change.)

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

Filed with the Office of the Secretary of State on May 2, 2024.

TRD-202401964

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 475-4879



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES

RELATIONSHIP

19 TAC §61.2

The State Board of Education (SBOE) proposes an amendment to §61.2, concerning nominations of trustees for military reservation school districts and Boys Ranch Independent School District. The proposed amendment would reflect changes made by House Bill (HB) 4210, 88th Texas Legislature, Regular Session, 2023, to the SBOE's process for appointing trustees for military reservation districts and add a definition for the term "commanding officer."

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §11.352, requires the SBOE to appoint a board of three or five trustees for each military reservation district established under TEC, §11.351. Enlisted personnel and officers may be appointed to the school board, but a majority of the trustees must be civilians. To be eligible to serve, one must either live or be employed on the military reservation. The trustees are selected from a list of people provided by the commanding officer of the military reservation.

HB 4210, 88th Texas Legislature, Regular Session, 2023, amended TEC, §11.352(b) and (c), to establish that a person who retires from active duty or civilian service while serving as a member of the board of trustees of a military reservation district may continue to serve for the remainder of his or her term. The bill also changed the SBOE's responsibility to adopt rules for the governance of special-purpose districts from permissive to required.

To implement HB 4210, the proposed amendment would add new §61.2(e) to specify that a trustee of a military reservation school district who retires from active duty or civilian service while serving as a member of the board of trustees may continue to serve for the remainder of his or her term.

In addition, the proposal would define "commanding officer" for the purposes of this section.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 12, 2024, meeting.

FISCAL IMPACT: Steve Lecholop, deputy commissioner for governance, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by defining "commanding officer" for the purpose of the rule and adding a provision to allow a trustee to continue serving his or her term upon retirement from active duty or civilian service.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to update the eligibility of people to serve on military reservation schools districts to conform to HB 4210, provide clarity to the public on who is eligible to serve on a board of trustees of a military reservation school district, and establish a definition for "commanding officer" for the purpose of the rule. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023, which requires the State Board of Education to appoint a board of three or five trustees for each military reservation district.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023.

§61.2. *Nomination of Trustees for Military Reservation School Districts and Boys Ranch Independent School District.*

(a) For purposes of this section, "commanding officer" is defined as the officer who is assigned to serve physically on the installation or military reservation on which the military reservation school district is located and who provides leadership for the functional support of and contingency or emergency coordination for the military reservation school district. (Perez-Diaz/Pickren) Adopted.

(b) [(a)] In nominating trustee candidates for military reservation school districts, the commanding officer of the military reservation shall do the following:

(1) submit a list to the commissioner of education with at least one nominee for each vacancy. A majority of the trustees appointed to the school board must be civilian, and all may be civilian. When two or more vacancies occur simultaneously, a list of at least one nominee for each vacancy shall be submitted. In cases when the commanding officer wishes to reappoint existing board members, a list of at least one nominee for each vacancy must still be submitted. Nominees not selected for existing vacancies may be resubmitted as candidates for subsequent vacancies. The commanding officer may rank in the order of preference the nominees submitted for each vacancy;

(2) submit a statement that verifies that each of the nominees is qualified under the general school laws of Texas and lives or is employed on the military reservation;

(3) submit a copy of a current biographical vita (resume) for each nominee, with a signature by the nominee attesting truth to the contents of the biographical vita;

(4) submit a statement from each nominee that expresses the nominee's willingness to accept appointment and to serve in such a capacity with full adherence to the state-established standards on the duties and responsibilities of school board members;

(5) submit a signed statement that expresses recognition of the powers of the board of trustees to govern and manage the operations of the military reservation school districts;

(6) submit a signed statement regarding the governance and management operations of the district that expresses recognition that the role of the commanding officer of the military reservation is limited only to the duty defined by statute in the process for appointing members of the board of trustees; and

(7) submit a statement that the membership composition of the entire board of trustees is in full compliance with the provisions of the Texas Education Code (TEC), §11.352.

(c) [(b)] In nominating trustee candidates for the Boys Ranch Independent School District (ISD), the president and chief executive officer of the Cal Farley's Boys Ranch shall do the following:

(1) submit a name to the commissioner for each vacancy. When two or more vacancies occur simultaneously, a name for each vacancy shall be submitted. In cases when the president and chief executive officer wishes to reappoint existing board members, the name of the existing board member for each vacancy must still be submitted;

(2) submit a statement that verifies that each of the nominees is qualified under the general school laws of Texas;

(3) submit a copy of a current biographical vita (resume) for each of the nominees, with a signature by the nominee attesting truth to the contents of the biographical vita;

(4) submit a statement from each of the nominees that expresses the nominee's willingness to accept appointment and to serve in such a capacity with full adherence to the state-established standards on the duties and responsibilities of school board members;

(5) submit a signed statement that expresses recognition of the powers of the board of trustees to govern and manage the operations of the Boys Ranch ISD;

(6) submit a signed statement regarding the governance and management operations of the district that expresses recognition that the role of the superintendent is in full compliance with the provisions of the TEC, §11.201; and

(7) submit a statement that the membership composition of the entire board of trustees is in full compliance with the provisions of the TEC, §11.352.

(d) [(e)] A member of a board of trustees appointed under the TEC, §11.352, and this section will serve a term of two years. A member of the board of trustees, who during the period of the term of office resigns from office or experiences a change of status that disqualifies such member for appointment under the provisions of the TEC, shall become ineligible to serve at the time of the change of status. A board vacancy resulting from such resignation or disqualification shall be filled in accordance with the procedures established under the TEC, §11.352, and this section.

(e) Notwithstanding subsection (d) of this section, a trustee of a military reservation school district appointed under this section who retires from active duty or civilian service while serving as a member of the board of trustees may continue to serve for the remainder of his or her term.

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 May 6, 2024.

TRD-202401999

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1028

The Texas Education Agency (TEA) proposes an amendment to §61.1028, concerning bus accident reporting. The proposed amendment would more closely align existing definitions with statute and, in accordance with House Bill (HB) 2190, 88th Texas Legislature, Regular Session, 2023, would change the word "accident" to "collision" throughout the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1028, requires that school districts and open-enrollment

charter schools report accidents in which the district's or charter school's buses are involved, in accordance with Texas Education Code (TEC), §34.015.

HB 2190, 88th Texas Legislature, Regular Session, 2023, modified TEC, §34.015, by updating the term "accident" to "collision." The proposed amendment to §61.1028 would implement HB 2190 by using the term "collision" throughout the rule.

In addition, the proposed amendment to §61.1028(a) would redefine the term "motor bus" in alignment with definitions in both TEC, §34.003, and Texas Transportation Code, §502.001.

FISCAL IMPACT: John Scott, chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Scott has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to align definitions and terminology in the rule with statute. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact. The rule will continue to have an annual reporting requirement for school districts.

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends June 17, 2024.

A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 10, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

CROSS REFERENCE TO STATUTE. Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023.

§61.1028. Reporting of Bus Collisions [Accidents].

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

(1) Collision [Accident]--Any collision [accident] as described by [the] Texas Transportation Code, Chapter 550, Subchapter B.

(2) Motor bus--In accordance with Texas Education Code, §34.003, and Texas Transportation Code, §502.001, a motor bus is a vehicle designed to transport more than 15 passengers, including the driver, and includes vehicles used to transport persons on the public highways for compensation, other than a vehicle operated by muscular power or a municipal bus.

~~(2) School bus--In accordance with the Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus; a school activity bus; or a motor bus.]~~

(3) Multifunction school activity bus--In accordance with [the] Texas Transportation Code, §541.201, a multifunction school activity bus is a subcategory of school bus. It must meet all FMVSS for a school bus except having traffic control devices, including flashing lights and stop arm, and it may not be painted in national school bus yellow. The multifunction school activity bus cannot be used to transport students from home to school or school to home or for any purpose other than school activities.

(4) School activity bus--In accordance with [the] Texas Transportation Code, §541.201, a school activity bus is a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than

on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.

(5) School bus--In accordance with Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus, a school activity bus, or a motor bus.

~~{(5) Motor bus--The term "motor bus" does not include a vehicle that meets the definition of a school bus, a multifunction school activity bus, or a school activity bus. A motor bus is:}~~

~~{(A) a commercial, motor transit-type vehicle owned or leased by the school district or the school district's commercial contractor that is designed to transport 16 or more passengers including the driver on school activity trips; or}~~

~~{(B) a transit-type bus operated by a mass/metropolitan transit authority when the school district contracts with the authority in accordance with Texas Education Code, §34.008, to transport students to and from school.}~~

(b) Reporting.

(1) School districts and open-enrollment charter schools shall report annually to the Texas Education Agency (TEA) the number of collisions [~~accidents~~] in which their buses were involved in the past year. School districts and open-enrollment charter schools shall report the collisions [~~accidents~~] in a manner prescribed by the commissioner of education. School districts and open-enrollment charter schools shall file annual collision [~~accident~~] reports to [~~the~~] TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

(A) the total number of bus collisions [~~accidents~~];

(B) the date each collision [~~accident~~] occurred;

(C) the type of bus, as specified in subsection (a) of this section, involved in each collision [~~accident~~];

(D) whether the bus involved in each collision [~~accident~~] was equipped with seat belts and, if so, the type of seat belts;

(E) the number of students and adults involved in each collision [~~accident~~];

(F) the number and types of injuries that were sustained by the bus passengers in each collision [~~accident~~]; and

(G) whether the injured passengers in each collision [~~accident~~] were wearing seat belts at the time of the collision [~~accident~~] and, if so, the type of seat belts.

(2) A school district or open-enrollment charter school shall report a bus collision [~~accident~~] involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus is owned, leased, contracted, or chartered by a school district or charter school and was transporting school district

or charter school personnel, students, or a combination of personnel and students; or

(B) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor with no passengers on board and the collision [~~accident~~] involved a [~~collision with a~~] pedestrian.

(3) A school district or open-enrollment charter school shall not report a bus collision [~~accident~~] involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor, the collision [~~accident~~] occurred when no passenger other than the school district's or charter school's driver or bus contractor's driver was on board the bus, and the collision [~~accident~~] did not involve a [~~collision with a~~] pedestrian; or

(B) the collision [~~accident~~] involved a bus chartered by a school district or charter school for a school activity trip and no school district or charter school personnel or students were on board the bus at the time of the collision [~~accident~~].

(4) A school district or open-enrollment charter school shall not report a collision [~~an accident~~] that occurred in a vehicle that is owned, contracted, or chartered by a school district or charter school and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §74.12, §74.13

The State Board of Education (SBOE) proposes amendments to §74.12 and §74.13, concerning graduation requirements. The proposed amendments would update titles of courses and career and technical education (CTE) career clusters, align all CTE programs of study with endorsements, and make technical edits.

BACKGROUND INFORMATION AND JUSTIFICATION: In November 2020, the SBOE adopted revisions to the Texas Essential Knowledge and Skills (TEKS) for physical education (PE) with an effective date of August 1, 2022. The revisions to the TEKS for the high school PE courses revised the amount of credit available to one credit for each course. The proposed amendment to §74.12 would make a technical edit to update the amount of credit associated with these courses to one credit. Additionally, the proposed amendment would revise the

language for PE substitutions to align with the reduction in the number of high school PE courses.

At the November 2021 SBOE meeting, the board approved for second reading and final adoption revised 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 begin moving 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." CTE sub-chapters are being moved from Chapter 130 to Chapter 127 as the TEKS are revised by the SBOE. In November 2021, the board gave final approval to new 19 TAC Chapter 127, Sub-chapters 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. In April 2022, the graduation requirements in 19 TAC §74.13 were updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 and the new title for Chapter 127.

In November 2023, the board took action to approve revisions to the CTE TEKS for career preparation and entrepreneurship courses. The proposed amendment to §74.13 would update titles of CTE courses and career clusters to align with these revisions.

Texas recently refreshed state-level programs of study to ensure coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study are aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. When the rule for endorsements was first adopted, programs of study were determined locally rather than at the state level. The proposed amendment to §74.13 would ensure all programs of study are specifically aligned to an endorsement and would eliminate language related to coherent sequences of CTE courses that is outdated.

In November 2023, the SBOE approved changes to its rules on innovative courses to remove the commissioner of education's authority to approve certain innovative courses. The proposed amendment to §74.13 would remove references to innovative courses approved by the commissioner.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 12, 2024 meeting.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding language regarding endorsements to reflect the updated programs of study that went into effect in the 2023-2024 school year.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify the rules by updating out-of-date language. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

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

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.025(a), (b-17), and (c-1).

§74.12. *Foundation High School Program.*

(a) (No change.)

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

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

(6) Physical education--one credit.

(A) The required credit may be selected from one full credit or a combination of two half credits from two different courses 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 the courses [any course] identified in subparagraph (A)(i) and (iii) [(A)] of this paragraph. Credit may not be earned more than twice for the course identified in subparagraph (A)(ii) 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) (No change.)

(c) - (d) (No change.)

§74.13. *Endorsements.*

(a) - (e) (No change.)

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

(1) Science, technology, engineering, and mathematics (STEM). Students who entered high school prior to the 2022-2023 school year [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 (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) 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. Students who entered high school prior to the 2022-2023 school year [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 127, Subchapter C, of this title (related to Agriculture, Food, and Natural Resources);

(ii) [(†)] Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources); [ø]

(iii) [(‡)] Chapter 130, Subchapter B, of this title (relating to Architecture and Construction); [ø]

(iv) [(§)] Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications); [ø]

(v) Chapter 127, Subchapter F, of this title (relating to Business, Marketing, and Finance);

(vi) [(¶)] Chapter 130, Subchapter D, of this title (relating to Business Management and Administration); [ø]

(vii) [(⌘)] Chapter 130, Subchapter F, of this title (relating to Finance); [ø]

(viii) [(Ⓜ)] Chapter 127, Subchapter J, of this title (relating to Hospitality and Tourism); [ø]

(ix) [(Ⓝ)] Chapter 130, Subchapter K, of this title (relating to Information Technology); [ø]

(x) [(Ⓞ)] Chapter 130, Subchapter M, of this title (relating to Manufacturing); [ø]

(xi) [(Ⓟ)] Chapter 130, Subchapter N, of this title (relating to Marketing); [ø]

(xii) Chapter 127, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics);

(xiii) [(Ⓡ)] Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics); [ø]

(xiv) [(Ⓢ)] Chapter 130, Subchapter Q, of this title (relating to Energy); or

(xv) [(Ⓣ)] Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(xiv) [(†)-(Ⓣ)] of this subparagraph; [ø]

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

(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; [ø]

(ii) debate; [ø]

(iii) advanced broadcast journalism; [ø]

(iv) advanced journalism: newspaper; [ø]

(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. Students who entered high school prior to the 2022-2023 school year [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); [ø]

(ii) Chapter 127, Subchapter I, of this title (relating to Health Science); [ø]

(iii) Chapter 130, Subchapter J, of this title (relating to Human Services); [ø]

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

(v) Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) 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; [ø]

(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) - (5) (No change.)

(6) STEM. Students who entered high school in the 2022-2023 school year or later 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) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to STEM:

(i) biomedical sciences;

(ii) civil engineering;

(iii) cybersecurity;

(iv) electrical engineering;

(v) engineering foundations;

- (vi) geospatial engineering and land surveying;
- (vii) mechanical and aerospace engineering;
- (viii) networking systems;
- (ix) nursing science;
- (x) programming and software development;
- (xi) renewable energy;
- (xii) robotics and automation technology; or
- (xiii) web development;

(B) 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;

(C) 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

(D) 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), and (C) of this paragraph.

(7) Business and industry. Students who entered high school in the 2022-2023 school year or later may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry:

- (i) accounting and financial services;
- (ii) agriculture business, leadership, and communications;
- (iii) agricultural technology and mechanical systems;
- (iv) animal science;
- (v) architectural drafting and design;
- (vi) automotive and collision repair;
- (vii) aviation maintenance;
- (viii) aviation pilots;
- (ix) business management;
- (x) carpentry;
- (xi) construction management and inspection;
- (xii) cosmetology;
- (xiii) culinary arts;
- (xiv) diesel and heavy equipment maintenance and commercial drivers;
- (xv) digital communications;
- (xvi) distribution, logistics, and warehousing;
- (xvii) drone (unmanned vehicle);
- (xviii) electrical;
- (xix) entrepreneurship;

- (xx) environmental and natural resources;
- (xxi) food science and technology;
- (xxii) graphic design and interactive media;
- (xxiii) HVAC and sheet metal;
- (xxiv) industrial maintenance;
- (xxv) information technology support and services;
- (xxvi) lodging and resort management;
- (xxvii) manufacturing technology;
- (xxviii) maritime;
- (xxix) marketing and sales;
- (xxx) masonry;
- (xxxi) oil and gas exploration and production;
- (xxxii) plant science;
- (xxxiii) plumbing and pipefitting;
- (xxxiv) printing and imaging;
- (xxxv) real estate;
- (xxxvi) refining and chemical processes;
- (xxxvii) retail management;
- (xxxviii) travel, tourism, and attractions; or
- (xxxix) welding;

(B) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry, if the mathematics and science requirements for the STEM endorsement are not met:

- (i) civil engineering;
- (ii) cybersecurity;
- (iii) electrical engineering;
- (iv) engineering foundations;
- (v) geospatial engineering and land surveying;
- (vi) mechanical and aerospace engineering;
- (vii) networking systems;
- (viii) programming and software development;
- (ix) renewable energy;
- (x) robotics and automation technology; or
- (xi) web development;

(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;
- (ii) debate;
- (iii) advanced broadcast journalism;
- (iv) advanced journalism: newspaper;
- (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.

(8) Public services. Students who entered high school in the 2022-2023 school year or later may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to public services:

(i) biomedical science, if the mathematics and science requirements for the STEM are not met;

(ii) diagnostic and therapeutic services;

(iii) early learning;

(iv) exercise science, wellness, and restoration;

(v) family and community services;

(vi) fire science;

(vii) government and public administration;

(viii) health and wellness;

(ix) health informatics;

(x) law enforcement;

(xi) legal studies;

(xii) nursing science, if the mathematics and science requirements for the STEM are not met; or

(xiii) teaching and training; or

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

(g) (No change.)

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER A. GIFTED/TALENTED EDUCATION

19 TAC §§89.1, 89.2, 89.4, 89.5

The State Board of Education (SBOE) proposes amendments to §§89.1, 89.2, and 89.5 and new §89.4 concerning gifted/talented education. The proposed revisions would update rules to align with the requirements of House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and codify current program practices.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 89, Subchapter A, provides rules for gifted and talented education. HB 1525, 87th Texas Legislature, Regular Session, 2021, provided for a gifted and talented student allotment and established criteria for using the funds. The proposed revisions to Chapter 89, Subchapter A, would implement HB 1525 and codify current program practices. Specifically, the following changes would be made.

Section 89.1 would be amended to add new paragraph (6) to establish that school district policies related to gifted and talented education may not limit the number of students who may be identified as gifted and talented. In addition, the section title would be modified to clarify that the section addresses the identification of gifted and talented students.

Section 89.2 would be amended to clarify terms regarding professional learning for staff and establish criteria for completion. The section title would also be updated to reflect the contents of the rule.

New §89.4 would align with HB 1525, 87th Texas Legislature, Regular Session, 2021, by establishing fiscal responsibilities for school districts regarding the use of gifted and talented services for identified students.

Section 89.5 would be amended to establish additional criteria for program accountability in new paragraphs (2) and (3). New paragraph (2) would require school districts to annually certify to the commissioner that the district's services for gifted and talented students have been established in accordance with the Texas State Plan for the Education of the Gifted/Talented (State Plan) and that the use of funds complies with new §89.4. New paragraph (3) would include the addition of a performance measure by the board of trustees in alignment with the State Plan.

The SBOE approved the proposed revisions for first reading and filing authorization at its April 12, 2024 meeting.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations programs, reporting, and student support, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would add a new regulation and expand existing regulations to align with

the requirements of HB 1525, 87th Texas Legislature, 2021, and clarify current expectations, practices, and requirements.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify requirements related to gifted and talented identification, professional learning, fiscal responsibility, and program accountability. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

STATUTORY AUTHORITY. The amendments and new section are proposed under Texas Education Code (TEC), §29.121, which establishes the definition of a gifted and talented student; TEC, §29.122, which establishes that each school district shall adopt a process for identifying and serving gifted and talented students; TEC, §29.123, which establishes that the State Board of Education shall develop and update a state plan for the education of gifted and talented students to guide school districts; §39.236, which establishes criteria for the commissioner to adopt standards to evaluate school district programs for gifted and talented students; and TEC, §48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which establishes criteria for utilizing the gifted and talented student allotment funds.

CROSS REFERENCE TO STATUTE. The amendments and new section implement Texas Education Code, §§29.121; 29.122; 29.123; 39.236; and 48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

§89.1. Student Identification [Assessment].

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

(1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;

(2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;

(3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;

(4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; ~~and~~

(5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement; ~~and~~ [-]

(6) not limit the number of students the district may identify as gifted/talented or served under the district's program for gifted/talented students.

§89.2. Professional Learning [Development].

School districts shall ensure that:

(1) prior to assignment in the program or within one semester of assignment, teachers who provide instruction and services that are a part of the program for gifted/talented [gifted] students have a minimum of 30 hours of professional learning [staff development] that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented [gifted] students;

~~[(2) teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester;]~~

(2) ~~[(3)]~~ teachers who provide instruction and services that are a part of the program for gifted/talented [gifted] students receive a minimum of six hours annually of professional learning [development] in gifted/talented [gifted] education; and

(3) ~~[(4)]~~ administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning [development] that includes nature and needs of gifted/talented students and program options with an update after legislative sessions.

§89.4. Fiscal Responsibility.

School districts shall adopt a policy regarding the use of funds to support the district's program for gifted and talented students, as required by Texas Education Code, §29.022(b). The policy must:

(1) ensure that 100% of state funds allocated for gifted/talented education are spent on providing gifted/talented services or enhancing the district's gifted and talented program; and

(2) establish a method to account for the expenditure of the gifted and talented allotment in alignment with the Texas Education Agency's financial compliance guidance.

§89.5. Program Accountability.

A school district ~~[School districts]~~ shall ensure that :

(1) student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented (State Plan); [-]

(2) it annually certifies to the commissioner of education that the district's program for gifted/talented students is consistent with the State Plan and that the district's use of funds comply with §89.4 of this title (relating to Fiscal Responsibility); and

(3) the board of trustees annually measures the performance of the district in providing gifted/talented services in alignment with the State Plan.

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 May 6, 2024.

TRD-202402003

Cristina de La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

The State Board of Education (SBOE) proposes the repeal of §§112.10-112.16, 112.17-112.20, and 112.31-112.39, concerning Texas Essential Knowledge and Skills (TEKS) for science. The proposed repeals would remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. In late 2019, the SBOE began the process to review and revise the TEKS for Kindergarten-Grade 12 science. At the recommendation of Work Group A, the SBOE directed the work groups to follow a backward-by-design approach to the revisions to the Kindergarten-Grade 12 science TEKS. Consequently, work groups started first with recommendations for revisions to the high school science TEKS. In November 2020, the SBOE approved for second reading and final adoption revised TEKS for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. At the June 2021 SBOE meeting, the board approved for second reading and final adoption new TEKS for Specialized Topics in Science and revised standards for Aquatic Science, Astronomy, Earth Science Systems (formerly titled Earth and Space Science), and Environmental Systems. At the November 2021 SBOE meeting, the board approved for second reading and final adoption new science TEKS for Kindergarten-Grade 8 with an implementation date of the 2024-2025 school year. At the November 2022 SBOE meeting, the board approved for second reading and final adoption the proposed amendment to §112.41 to ensure implementation language for all science courses was consistent.

The proposed repeals would remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

The SBOE approved the proposed repeals for first reading and filing authorization at its April 12, 2024 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five

years the proposal is in effect, there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing outdated science TEKS that will be superseded by a newly adopted set of TEKS.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to repeal the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year to avoid confusion. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

SUBCHAPTER A. ELEMENTARY

19 TAC §§112.10 - 112.16

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§112.10. *Implementation of Texas Essential Knowledge and Skills for Science, Elementary, Adopted 2017.*

§112.11. *Science, Kindergarten, Adopted 2017.*

§112.12. *Science, Grade 1, Adopted 2017.*

§112.13. *Science, Grade 2, Adopted 2017.*

§112.14. *Science, Grade 3, Adopted 2017.*

§112.15. *Science, Grade 4, Adopted 2017.*

§112.16. *Science, Grade 5, Adopted 2017.*

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 May 6, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§112.17 - 112.20

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§112.17. *Implementation of Texas Essential Knowledge and Skills for Science, Middle School, Adopted 2017.*

§112.18. *Science, Grade 6, Adopted 2017.*

§112.19. *Science, Grade 7, Adopted 2017.*

§112.20. *Science, Grade 8, Adopted 2017.*

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

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



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§112.31 - 112.39

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§112.31. *Implementation of Texas Essential Knowledge and Skills for Science, High School.*

§112.32. *Aquatic Science, Beginning with School Year 2010-2011 (One Credit).*

§112.33. *Astronomy, Beginning with School Year 2010-2011 (One Credit).*

§112.34. *Biology (One Credit), Adopted 2017.*

§112.35. *Chemistry (One Credit), Adopted 2017.*

§112.36. *Earth and Space Science, Beginning with School Year 2010-2011 (One Credit).*

§112.37. *Environmental Systems, Beginning with School Year 2010-2011 (One Credit).*

§112.38. *Integrated Physics and Chemistry (One Credit), Adopted 2017.*

§112.39. *Physics (One Credit), Adopted 2017.*

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

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) proposes the repeal of §§126.5 - 126.7 and 126.13 - 126.16, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The proposed repeals would remove the TEKS for Kindergarten-

Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. 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. New elementary and middle school TEKS for technology applications were approved for second reading and final adoption at the June 2022 SBOE meeting and became effective August 7, 2022.

The proposed repeal would remove the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

The SBOE approved the proposed repeals for first reading and filing authorization at its April 12, 2024 meeting.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to

its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to remove the TEKS for elementary and middle school technology applications that would be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.5 - 126.7

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§126.5. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Elementary, Beginning with School Year 2012-2013.

§126.6. Technology Applications, Kindergarten-Grade 2, Beginning with School Year 2012-2013.

§126.7. Technology Applications, Grades 3-5, Beginning with School Year 2012-2013.

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

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TRD-202402007

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§126.13 - 126.16

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§126.13. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Middle School, Beginning with School Year 2012-2013.

§126.14. Technology Applications, Grade 6, Beginning with School Year 2012-2013.

§126.15. Technology Applications, Grade 7, Beginning with School Year 2012-2013.

§126.16. Technology Applications, Grade 8, Beginning with School Year 2012-2013.

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

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TRD-202402008

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes the repeal of §§127.11, 127.12, 127.14 - 127.16, 127.309, 127.311, 127.402, 127.404 - 127.408, 127.412, 127.468, 127.473, 127.742, 127.743, 127.751, 127.752, 127.762, and 127.763, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by

rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 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. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing sections to avoid confusion with the new TEKS that are being implemented at the beginning of the 2024-2025 school year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would

not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year to avoid confusion with the new TEKS that are being implemented. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

SUBCHAPTER B. HIGH SCHOOL

19 TAC §§127.11, 127.12, 127.14 - 127.16

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§127.11. *Implementation of Texas Essential Knowledge and Skills for Career Development, High School, Adopted 2015.*

§127.12. *Project-Based Research (One Credit), Adopted 2015.*

§127.14. *Career Preparation I (Two Credits), Adopted 2015.*

§127.15. *Career Preparation II (Two Credits), Adopted 2015.*

§127.16. *Extended Career Preparation (One Credit), Adopted 2016.*

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

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TRD-202402009

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §127.309, §127.311

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§127.309. *Implementation of Texas Essential Knowledge and Skills for Education and Training, Adopted 2015.*

§127.311. *Human Growth and Development (One Credit), Adopted 2015.*

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 May 6, 2024.

TRD-202402010

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER I. HEALTH SCIENCE

19 TAC §§127.402, 127.404 - 127.408, 127.412

§127.402. *Implementation of Texas Essential Knowledge and Skills for Health Science, Adopted 2015.*

§127.404. *Medical Terminology (One Credit), Adopted 2015.*

§127.405. *Anatomy and Physiology (One Credit), Adopted 2015.*

§127.406. *Medical Microbiology (One Credit), Adopted 2015.*

§127.407. *World Health Research (One Credit), Adopted 2015.*

§127.408. *Pathophysiology (One Credit), Adopted 2015.*

§127.412. *Health Science Theory (One Credit), Adopted 2015.*

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 May 6, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER J. HOSPITALITY AND TOURISM

19 TAC §127.468, §127.473

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§127.468. *Implementation of Texas Essential Knowledge and Skills for Hospitality and Tourism, Adopted 2015.*

§127.473. *Food Science (One Credit), Adopted 2015.*

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 May 6, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §§127.742, 127.743, 127.751, 127.752, 127.762, 127.763

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§127.742. *Implementation of Texas Essential Knowledge and Skills for Science, Technology, Engineering, and Mathematics, Adopted 2015.*

§127.743. *Principles of Applied Engineering (One Credit), Adopted 2015.*

§127.751. *Engineering Design and Presentation I (One Credit), Adopted 2015.*

§127.752. *Engineering Design and Presentation II (Two Credits), Adopted 2015.*

§127.762. *Computer Science I (One Credit).*

§127.763. *Computer Science II (One Credit).*

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

Filed with the Office of the Secretary of State on May 6, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes the repeal of §130.278 and §130.384, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The proposed repeals would remove the Texas Essential Knowledge and Skills (TEKS) and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 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. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC

§127.275 and §127.318 beginning with the 2024-2025 school year.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations by removing sections to avoid confusion with the new TEKS that are being implemented at the beginning of the 2024-2025 school year.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to remove the TEKS and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year to avoid confusion with the new TEKS that are being implemented. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received

by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024.

SUBCHAPTER J. HUMAN SERVICES

19 TAC §130.278

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§130.278. *Child Guidance (Two Credits), Adopted 2015.*

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 May 6, 2024.

TRD-202402014

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



SUBCHAPTER N. MARKETING

19 TAC §130.384

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; 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).

§130.384. *Entrepreneurship (One Credit), Adopted 2015.*

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 May 6, 2024.

TRD-202402015

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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

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TITLE 22. EXAMINING BOARDS

**PART 35. TEXAS STATE BOARD OF
EXAMINERS OF MARRIAGE AND
FAMILY THERAPISTS**

**CHAPTER 801. LICENSURE AND
REGULATION OF MARRIAGE AND
FAMILY THERAPISTS**

**SUBCHAPTER C. APPLICATIONS AND
LICENSING**

22 TAC §801.143

The Texas Behavioral Health Executive Council proposes amendments to §801.143, relating to Supervisor Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to set equitable requirements for achieving supervisor status; to standardize provisions concerning automatic revocation of supervisor status after a disciplinary order imposes a probated suspension, suspension, or revocation of a license; and makes typographical updates.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on June 16, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.143. *Supervisor Requirements.*

(a) To apply for supervisor status, an LMFT must be in good standing and submit:

(1) an application and applicable fee;

(2) documentation of the completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(3) documentation of one of following:

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution;

(B) a 40-hour continuing education course in clinical supervision; or

(C) successful completion of an American Association for Marriage and Family Therapy (AAMFT) approved Fundamentals of Supervision course.

~~[(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the of following:]~~

~~[(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and]~~

~~[(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or]~~

~~[(B) a 40-hour continuing education course in clinical supervision; or]~~

~~[(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).]~~

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference;

(5) an established plan for the custody and control of the records of supervision for each LMFT Associate in the event of the supervisor's death or incapacity, or the termination of the supervisor's practice; and

(6) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may only supervise the number of individuals for which the supervisor can provide adequate supervision.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.

(i) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(j) Upon execution of a Council order for probated suspension, suspension, or revocation of the LMFT license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked must: [A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:]

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(k) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(l) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) At a minimum, the 40-hour continuing education course in clinical supervision, referenced in subsection (a)(3)(B) of this rule, must meet each of the following requirements: [The 40-hour supervision training must comply with §801.261 of this title (relating to Requirements for Continuing Education) and:]

(1) the course must be taught by a graduate-level licensee holding supervisor [licensed marriage and family therapist holding supervisor] status issued by the Council:

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-hour supervision training must include at least:

(A) three (3) hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) hours for supervisory relationship and marriage and family therapist development;

(C) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(E) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(n) Subsection (m) of this rule is effective May 1, 2023

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 May 1, 2024.

TRD-202401943

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 305-7706



22 TAC §801.261

The Texas Behavioral Health Executive Council proposes amendments to §801.261, relating to Requirements for Continuing Education.

Overview and Explanation of the Proposed Rule. The proposed amendments will require licensees to complete one hour of continuing education in crisis management in order to renew their license. This one hour requirement is proposed to be included in the currently required 30 hours of continuing education needed for the renewal of a license. Crisis management can include, but is not limited to, suicidal ideation, homicidal ideation, abuse or

neglect, domestic violence, crisis prevention, and crisis or disaster response.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on June 16, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.261. *Requirements for Continuing Education.*

(a) Minimum Continuing Education Hours Required.

(1) An LMFT must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours in

cultural diversity or competency. Additionally, effective September 1, 2024, the 30 hours of continuing education must also include 1 hour of continuing education in crisis management.

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements. The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee with supervisory status must take and pass the jurisprudence examination. One hour of continuing education in ethics may be claimed for passing the jurisprudence examination.

(3) A licensee who provides telehealth services must complete 2 hours of continuing education in technology-assisted services.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of marriage and family therapy;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(d) Acceptable cultural diversity or competency and crisis management activities. [Hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]

(1) Cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(2) Crisis management hours include, but are not limited to continuing education regarding suicidal ideation, homicidal ideation, abuse or neglect, domestic violence, crisis prevention, and crisis or disaster response.

(e) Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(3) of this section, and be directly related to the practice of marriage and family therapy;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of marriage and family therapy;

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned.

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(f) Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) a graduate-level licensee with supervisor status;

(7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(8) any provider approved or endorsed by a provider listed herein.

(g) Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(h) Notwithstanding subsection (f) above, licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of marriage and family therapy. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program, or offering from a third-party is not subject to this self-study limitation and may count as acceptable education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(i) The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(j) Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

(k) Subsection (f) of this rule is effective January 1, 2024.

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 May 1, 2024.

TRD-202401944

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 305-7706



TITLE 28. INSURANCE

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

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

28 TAC §102.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §102.2, concerning gifts, grants, and donations. Section 102.2 implements Texas Labor Code §402.062.

EXPLANATION. The proposed amendments update the language in §102.2 and remove obsolete provisions. Amending §102.2 is necessary to reflect the current agency structure to ensure that the rule is clear and accurate. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments also explain DWC's process for providing notice of gifts, grants, and donations, and include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Landrum does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefits of streamlin-

ing the Texas Administrative Code by removing or updating obsolete provisions, as well as ensuring that DWC's rules conform to Labor Code §402.062 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §402.062 because they do not impose requirements beyond those in the statute. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments do not impose additional requirements on regulated persons. As a result, any associated cost does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. They do not affect additional people or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on June 17, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes amendments to §102.2 under Labor Code §§402.062, 402.00111, 402.00116, and 402.061.

Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 102.2 implements Labor Code §402.062, recodified by House Bill (HB) 752, 73rd Legislature, Regular Session (1993), and last amended by HB 7, 79th Legislature, Regular Session (2005).

§102.2. Gifts, Grants, and Donations.

(a) The division may accept and use gifts, grants, and donations in accordance with applicable law, including the Labor Code and the Government Code. [The commission may accept gifts, grants, and donations made to the Texas Workers' Compensation Commission as follows:]

[(1) If the value of a gift or donation is \$500 or more, the commissioners must, by a majority vote at a public meeting, acknowledge the gift or donation, no later than the 90th day after the date it is accepted.]

[(2) The Executive Director may accept a gift or donation on behalf of the commission. The Executive Director shall report all accepted gifts and donations to the commissioners.]

[(3) The Commission may accept a grant from the Texas Workers' Compensation Insurance Fund for the purpose of implementing steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care. The commission must additionally:]

[(A) publish the name of the grantor and the purpose and conditions of the grant in the *Texas Register*;

[(B) provide a 20-day public comment period prior to acceptance of the grant; and]

[(C) acknowledge acceptance at a public meeting.]

~~[(4) The Executive Director may accept all other grants on behalf of the Commission and shall report all accepted grants to the Commissioners.]~~

~~[(b) The acceptance or acknowledgment of a gift, grant, or donation made in accordance with subsection (a)(1) or (a)(3) of this section must be reflected in the minutes of the public meeting at which the gift, grant, or donation was accepted or acknowledged. The minutes must include the name of the donor/grantor; a description of the gift, grant, or donation; and a general statement of the purpose for which the gift, grant, or donation will be used.]~~

~~[(e) The Executive Director shall forward all money or financial instruments received as a gift, grant, or donation to the Comptroller of Public Accounts, for deposit in the appropriate commission fund.]~~

~~[(d) The Executive Director shall, where appropriate, convert non-monetary gifts, grants, and donations to cash.]~~

(b) On receiving a gift, grant, or donation of \$500 or more, the division will post on the public website for at least five years from the date it was received:

(1) The date the division received the gift, grant, or donation.

(2) The identity of the donor.

(3) The amount of the gift, grant, or donation.

(4) If applicable, the stated purpose of the gift, grant, or donation.

(c) [(e)] A donor may direct the use of the gift, grant, or donation in writing. The division will follow this [This] direction [will be followed by the commission,] as nearly as practicable, and in accordance with state and federal law.

(d) [(f)] The division [Commission] may not accept a gift or donation of \$500 or more from a person who is a party to a contested case before the agency until the 30th day after the decision in the case becomes final under §2001.144 of the Texas Government Code. For purposes of this rule, "contested case" has the meaning assigned by §2001.003 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401886

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 804-4703



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

34 TAC §20.133

The Comptroller of Public Accounts proposes to amend §20.133, concerning training and certification program.

The comptroller amends this section to assist state agencies so that they may fulfill their purchasing functions and contract development obligations. The comptroller is responding to the workforce shortage in this career field. Many state agencies rely on contractors and temporary workers to perform purchasing functions. However, without the means to obtain the proper credentials, these contractors and temporary workers are limited in their ability to perform their assigned duties. The proposed amendment is designed to close this gap. Thus, the amendment should increase the number of workers with these vital credentials; create opportunities for these workers to obtain full-time state employment in this career field; and increase the likelihood of retention of these valuable talents and skills for the State of Texas.

This amendment adds a definition of contractor in subsection (b). The amendment of subsection (c)(1) requires contractors retained by a state agency to perform purchasing functions to complete the Statewide Procurement Division's (SPD's) Texas Purchasing Course. In addition, the amendment of subsection (c)(2)(A) requires contractors retained by a state agency to perform contract development functions to become certified as Certified Texas Contract Developers. The amendment of subsection (c)(2)(A) will also correct a minor grammatical error. Finally, the amendment of subsection (d) provides direction to the SPD Director to decide when contractors may obtain such training and certification.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will increase the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by creating opportunities for contract work or to obtain full-time state employment in this career field and increase retention of these talents and skills. There would be no significant anticipated economic cost to the public. The proposed rule amendment would not have an adverse economic effect on small businesses or rural communities. The certification training for which a fee would be charged is currently unavailable to anyone other than a state employee. A decision by anyone other than a state employee to seek certification and contract work for which certification is required, as would newly be permitted under the proposed rule amendment, would be voluntary. A contractor, as defined under the proposed amended rule, or another person or entity on the contractor's behalf, and not the hiring state agency, would be responsible for paying the cost of the required applicable credentialing. The current cost of the SPD's Basic Texas Purchaser Course is \$100.

The current cost of the Texas Certified Contract Developer and Texas Certified Contract Manager courses are both \$435. There is also a certification renewal fee of \$50 and requirement for continuing education hours, and a fee for the CTCD certification exam of \$120, if paying with a Money Order, Check or Credit Card and \$130, if paying with a Purchase Order. It is anticipated that there would be at least one but not more than 1000 contractors seeking such credentialing.

You may submit comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13528 Austin, Texas 78711 or to the email address: Tosca.McCormick@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Government Code, §656.051(a), which grants to the comptroller the authority to establish and offer appropriate training to vendors on a cost recovery basis, as well as the authority to adopt rules to administer Section 656.051. The rule amendment is also proposed under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

§20.133. *Training and Certification Program.*

(a) Purpose. The purpose of these rules is to provide a uniform procedure through which the division will train and certify individuals who conduct government procurement functions.

(b) Definitions. The following words and terms when used in this section shall have the following meanings.

(1) Purchasing--The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the *Texas Register*.

(2) Contract development--The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

(3) Contract management--The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.

(4) Procurement--The performance of any purchasing, contract development, or contract management functions.

(5) Contractor--For purposes of this section, a person other than a state agency employee retained by a state agency to perform purchasing or contract development functions.

(c) Training required.

(1) Purchasing requirements. A state agency employee or contractor must complete the division's Texas Purchasing Course to engage in purchasing functions on behalf of a state agency if the employee or contractor:

(A) has the job title of "purchaser";

(B) performs purchasing functions as 15% or more of their job functions; or

(C) makes a purchase in excess of \$10,000.

(2) Certified Texas Contract Developer requirements.

(A) A state agency employee or contractor must be certified as a Certified Texas Contract Developer to engage in contract development functions on behalf of a state agency and to issue ~~issues~~ a solicitation or contract award required to be posted to the Electronic State Business Daily or in the *Texas Register*.

(B) A Certified Texas Contract Developer may conduct purchasing functions.

(3) Certified Texas Contract Manager requirements. A state agency employee must be certified as a Certified Texas Contract Manager to engage in contract management functions on behalf of a state agency if the employee:

(A) has the job title of "contract manager" or "contract administration manager" or "contract technician";

(B) performs contract management functions as 50% or more of their job functions; or

(C) manages any contract in excess of \$5,000,000.

(4) Certified Texas Contract Manager exemption. In accordance with Government Code, §656.052(h)(2), a contract manager whose contract management duties primarily relate to contracts described by Government Code, §2262.002(b) is exempt from the contract management certification requirements of this section.

(5) Licensed attorneys exemption. A licensed attorney employed by a state agency performing procurement or contract management functions described by this section is exempt from the certification requirements of this section.

(d) Eligible applicants. To be eligible to apply for and receive a certification, an applicant must be:

(1) a current Texas state or local government employee; ~~or~~

(2) at the sole discretion of the director, a contractor as defined in subsection (b)(5) of this section; or

(3) ~~[(2)]~~ at the sole discretion of the director, a student:

(A) currently enrolled in an accredited Texas university or community college; or

(B) who has graduated within the last three years from an accredited Texas university or community college.

(e) Requirements to receive certification.

(1) To be a Certified Texas Contract Developer, an eligible applicant must:

(A) complete the Texas Contract Developer Certification training course provided by the division;

(B) complete the division approved Texas Contract Developer Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Developer Certification.

(2) To be a Certified Texas Contract Manager, an eligible applicant must:

(A) complete the Texas Contract Manager Certification training course provided by the division;

(B) complete the division approved Texas Contract Manager Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Manager Certification.

(f) Training completion. To complete any training required in this section, an eligible applicant must:

(1) register for the applicable training using the electronic registration provided by the division on the official comptroller website;

(2) provide documentation of eligibility acceptable to the director;

(3) attend the applicable training course; and

(4) receive confirmation of course completion from the director.

(g) Certification examinations.

(1) To take any certification examination required in this section, an eligible applicant must register to take the examination using the electronic registration provided by the division on the official comptroller website within:

(A) three months of confirmation of completion of the applicable course by the director; or

(B) the time period determined at the sole discretion of the director with documented extenuating circumstances not to exceed twelve months from confirmation of completion of the applicable course.

(2) If an applicant receives a score of less than 80% following completion of the course, the applicant shall have two additional attempts to obtain a score of 80% or higher during a time period not to exceed six months following completion of the course.

(3) If the applicant does not obtain a score of 80% or higher after three attempts, the applicant must retake the applicable training course prior to retaking the examination.

(h) Certification issuance.

(1) To be issued any certification in this section, eligible applicants must within three months of the issuance of examination completion with a score of 80% or higher, submit:

(A) an application provided by the division on the official comptroller website; and

(B) any other documents required by the director.

(2) If the director determines that all applicable requirements have been satisfied, a certification will be issued to the applicant.

(i) Continuing education.

(1) A procurement professional certified in this section must complete twenty-four hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain certification. Twenty-three hours of the required hours must be division-sponsored training and one hour may be an elective selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(2) A procurement professional dual certified in this section must complete thirty-six hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain dual certification. Thirty-four hours of the required hours must be division-sponsored training and two hours may be elective courses selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(3) A procurement professional certified in this section is required to take the Renewal Refresher course offered by division once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours.

(4) The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal. Renewal Refresher courses completed prior to two years following the date of initial certification or last renewal will not be considered applicable to the Renewal Refresher requirement.

(5) Division-sponsored or elective course continuing education will be counted as credit with the completion of the course and approval of the continuing education course credit application. The division will email a certificate of completion to the certified procurement professional upon approval of the continuing education course credit application. The same course may not be taken more than once per renewal period for credit.

(j) Certification renewal.

(1) Certifications issued in this section expire three years following the date of issuance.

(2) Procurement professionals certified in this section must submit an application for certification renewal at least thirty calendar days prior to the expiration date of their certification.

(3) The application must include a certificate of completion of the applicable Renewal Refresher course, and certificates of completion of the division sponsored continuing education required under this rule.

(4) If a certified procurement professional allows the certification to expire, an extension may be requested within thirty calendar days from the date of expiration. If the division approves the extension, the certified procurement professional has sixty calendar days from the date of extension approval to complete the requirements for renewal. If the certified procurement professional does not complete the requirements during the extension period, the initial certification requirements must be completed to receive a new certification.

(5) Certifications awarded or renewed under previous requirements are valid until the date of first renewal.

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 May 6, 2024.

TRD-202402019
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: June 16, 2024
For further information, please call: (512) 475-2220



DIVISION 4. IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

34 TAC §20.157

The Comptroller of Public Accounts proposes to amend §20.157, concerning adherence to ethical standards.

This amendment will require that contractors retained by a state agency to perform purchasing functions or to perform contract development functions must adhere to the same ethical standards required of comptroller employees, and must also avoid all conflicts of interest in their purchasing activities.

Many state agencies rely on contractors and temporary workers to perform purchasing functions. The comptroller proposes this amendment because it is in the public's interest that contractors working in the state public procurement arena in Texas be held to the same ethical standards as comptroller employees.

Contemporaneous with this proposal, the comptroller is proposing an amendment of §20.133, concerning training and certification program. Under that proposal, contractors retained by a state agency to perform purchasing functions must complete the Statewide Procurement Division's (SPD's) Basic Texas Purchaser Course and contractors retained by a state agency to perform contract development functions must become certified as Certified Texas Contract Developers.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will increase the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by updating the rule to reflect current practices. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13528 Austin, Texas 78711 or to the email address: Tosca.McCormick@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule is proposed under Government Code, §656.051(a), which grants the comptroller the authority to establish and offer appropriate training to vendors, including ethics training, on

a cost recovery basis, as well as the authority to adopt rules to administer Government Code, §656.051. The rule is also proposed under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

§20.157. *Adherence to Ethical Standards.*

Employees of agencies, and contractors as defined in §20.133 of this title, who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of comptroller employees, and shall avoid all conflicts of interest in their purchasing activities.

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 May 6, 2024.

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Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.24

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §211.24, Licensee Service Report Database. This proposed new rule conforms with the addition of Texas Occupations Code §1701.205 made by Senate Bill 1445 (88R). The proposed new rule outlines the process for an officer or law enforcement agency to request that the service report for certain officers be excluded from the public database and states how long certain user activity will be maintained by the Commission.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.205 to establish a process to exclude service reports for certain officers from the public database. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses,

or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.205 requires the Commission to adopt rules to exclude from the public database service reports for certain officers.

The new rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. No other code, article, or statute is affected by this proposal.

§211.24. Licensee Service Report Database.

(a) The commission will exclude from the public database established under Texas Occupations Code §1701.205 the licensee service report (LSR) of certain officers if including the LSR in the public database would create a safety risk for an undercover officer or an officer involved in an active sensitive operation.

(b) An appointed officer or a law enforcement agency employing the officer may request, on a form prescribed by the commission, the LSR of the officer to be excluded from the public database.

(c) The commission, at the discretion of the executive director, may exclude the LSR of any licensee for good cause shown.

(d) The user activity required to be tracked on the public database will be maintained by the commission for a minimum of three years from creation.

(e) The effective date of this section is September 1, 2024.

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 May 1, 2024.

TRD-202401947

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-7700



CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees. This proposed amended rule conforms with the amendments made to Texas Occupations Code §§1701.253(q) and 1701.3525 made by Senate Bill 1852 (88R). The proposed amended rule clarifies the continuing education requirements regarding Advanced Law Enforcement Rapid Response Training.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §§1701.253 and 1701.3525 to require active shooter response training for law enforcement personnel. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to publiccomment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Occupations Code §1701.253, School Curriculum. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to education and training for the licensing of officers. Texas Occupations Code §1701.253 requires the Commission to establish minimum curriculum requirements.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.351, Continuing Education Required for Peace Officers, and §1701.3525, Active Shooter Response Training Required for Officers. No other code, article, or statute is affected by this proposal.

§218.3. *Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos. All peace officers shall complete ALERRT Level 1 training not later than August 31, 2027. Training for all chief administrators and their designated senior level peace officers shall include ALERRT command and leadership training each training unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable; and

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270) within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065) within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is TBD [April 1, 2024].

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 May 1, 2024.

TRD-202401948

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-7700

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code §651.202, Definitions, and §651.222, Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration. The amendments add new definitions and create new voluntary license categories for latent print processing technicians, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts and elevate the minimum education requirement for document examiners from a high school diploma to a baccalaureate based on input received from the document examiner community.

Background and Justification. Under the amended rules, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts may apply for a voluntary license by the Commission. The Commission also defines certain crime scene processing and reconstruction and document examination terms for clarity. The amendments are necessary to reflect adoptions made by the Commission at its April 26, 2024 quarterly meeting at which the Commission voted to incorporate the changes to its administrative rules expanding its voluntary licensing program to include these new licenses and updates to the document examiner voluntary license.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is an option for crime scene practitioners not eligible for mandatory licensure in the State to achieve a voluntary license by the Commission and for better assurance of the quality and educational background of voluntarily licensed forensic document examiners in the State. Voluntary license requirements encourage forensic practitioner participation in continuing

education requirements, compliance with the Texas Forensic Analyst and Crime Laboratory Manager's Code of Professional Responsibility, and a general forensic analyst licensing exam that includes a required understanding of forensic analyst disclosure obligations designed to improve the integrity and reliability of forensic science in Texas courtrooms for practitioners who opt into the voluntary license.

Fiscal Impact on Small and Micro-businesses and Rural Communities. There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.0221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does require a fee, but the fee associated with the new license categories is voluntary for those wishing to achieve licensure in one of the three new categories of voluntary licensure; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not expand, limit, or repeal an existing regulation; 7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Texas Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024, to be considered by the Commission.

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a, its authority to regulate forensic analysts under Article 38.01 § 4-a, and its authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

§651.202. *Definitions.*

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

(1) ~~[(4)]~~ Accredited laboratory - Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(2) ~~[(6)]~~ Accredited university - A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.

(3) Crime scene investigation - Includes locating, documenting, and preserving evidence at a crime scene as well as analysis of selected evidence for purposes of assessing suitability for additional forensic testing. It does not include the application of the scientific method to evaluate information regarding a scene, which would be considered crime scene reconstruction.

(4) Crime scene processing - Includes locating, documenting, and preserving evidence at a crime scene, but does not include any analytical activities with respect to the evidence.

(5) ~~[(10)]~~ Crime scene reconstruction -The application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime scene reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.

(6) Document examination - Includes the scientific examinations, analyses, and comparisons of documents in order to determine the origin, authenticity, and authorship.

(7) ~~[(2)]~~ Forensic analysis - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(8) ~~[(1)]~~ Forensic analyst - A person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(9) ~~[(12)]~~ Forensic anthropology - Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.

(10) ~~[(3)]~~ Forensic pathology - Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(11) ~~[(9)]~~ Interpretation for toxicology - Interpretation is the consideration of dose-response relationships between drugs, alcohol, or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).

(12) [(14)] Latent print examination - Includes the forensic examination of friction ridge detail from the hands and feet.

(13) Latent print processing -Includes identifying and preserving latent prints from items obtained at a crime scene utilizing appropriate visual, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.

(14) [(5)] Physical evidence - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(15) [(7)] Professional misconduct - The forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

(16) [(8)] Technician - An individual who performs basic analytical functions under the supervision of a qualified analyst, but does not evaluate data, reach conclusions, or sign any report for court or investigative purposes, shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

§651.222. *Voluntary Forensic Analyst and Technician Licensing Requirements [Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration].*

(a) Issuance. The Commission may issue an individual's forensic analyst or technician license for forensic examinations or tests not subject to accreditation under this section.

(b) Voluntary. Licensure under this section is voluntary and is not a prerequisite for practice in any of the forensic disciplines listed in this section.

(c) The following forensic disciplines are eligible for a forensic analyst or forensic technician license under this section:

(1) forensic anthropology;

(2) document examination, including document authentication, physical comparison, qualitative determination, and recovery [product determination];

(3) latent print examination, including the forensic examination of friction ridge detail from the hands and feet; [and]

(4) latent print processing, including identifying and preserving latent prints from items obtained at a crime scene utilizing appropriate visual, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate;

(5) [(4)] digital/multimedia evidence (limited to computer, mobile, vehicle, call detail records (i.e., phone carrier record comparisons to mobile device), and location detail records); and [-]

(6) crime scene, with the following sub-disciplines:

(A) crime scene processing technician, including crime scene documentation (scene notes, photography, sketching, laser scanning), and evidence identification, collection, preservation, and submission;

(B) crime scene investigation analyst, including crime scene processing activities as well as the application of analytical techniques used for evidence triage such as chemical and presumptive testing. It may also include the issuance of a report on crime scene documentation and/or crime scene processing;

(C) crime scene reconstruction analyst, including crime scene processing activities, crime scene investigation activities, and any forensic activities requiring the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements;

(D) crime scene reconstruction analyst, with specific recognition in bloodstain pattern analysis, including all crime scene reconstruction activities described in subparagraph (C) of this paragraph; and

(E) crime scene reconstruction analyst, with specific recognition in shooting incident reconstruction, including crime scene reconstruction activities described in subparagraph (C) of this paragraph.

(d) Application. Before being issued a forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(e) Minimum Education Requirements.

(1) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a baccalaureate or advanced degree from an accredited university [high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree)].

(2) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Latent Print Analyst. An applicant for a forensic analyst license in latent print examination must have:

(A) A baccalaureate or advanced degree from an accredited university;

(B) 3 years of experience in latent print examination with an Associates of Arts or Associates of Science; or

(C) 4 years of experience in latent print examination and 176 hours of training that includes 16 hours of testimonial training (with only a maximum of 80 conference hours accepted as training hours).

(4) Latent Print Processing Technician. An applicant for a forensic technician license in latent print processing must have a minimum of a high school diploma or equivalent degree.

(5) [(4)] Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have:

(A) a baccalaureate or advanced degree from an accredited university;

(B) a non-law enforcement or non-military background without a baccalaureate degree, demonstrating equivalent digital skill

set through Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certification Certified Forensic Examination (GCFE), or Global Information Assurance Certification Certified Forensic Analyst (GCFA) or equivalent non-vendor certification examination(s) with competency test(s); or

(C) law enforcement or military experience equivalent demonstrated through forensic training through one of the following organizations: SysAdmin, Audit, Network, and Security (SANS), International Association for Computer Investigative Specialists (IACIS), National White Collar Crime Center (NW3C), Law Enforcement & Emergency Services Video Association International, Inc. (LEVA), U.S. Military, Computer Analysis Response Team (CART) (FBI Training), Seized Computer Evidence Recovery Specialist (SCERS), or U.S. Secret Service.

(6) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction, crime scene reconstruction with specific recognition in bloodstain pattern analysis, or crime scene reconstruction with specific recognition in shooting incident reconstruction must have a minimum of an associate's degree or equivalent degree.

(7) Crime Scene Investigation Analyst. An applicant for a forensic analyst license limited to the crime scene investigation category of licensure must have a minimum of a high school diploma or equivalent degree.

(8) Crime Scene Processing Technician. An applicant for a forensic technician license limited to the crime scene processing technician category of licensure must have a minimum of a high school diploma or equivalent degree.

(9) [(5)] Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(f) Specific Coursework Requirements and Certification Requirements.

(1) General Requirement for Statistics. With the exception of the categories of licensure specifically exempt in this subsection, an [An] applicant for any forensic analyst license under this section must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Forensic Discipline-Specific Coursework Requirements.

(A) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(B) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements necessary [required] to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(C) Latent Print Analyst.

(i) An applicant for a forensic analyst license in latent print examination who qualifies for a latent print analyst license based on the minimum education requirements set forth in subsection (d)(3)(A) or (B) of this section must have a minimum of 24 semester-credit hours or equivalent in science, technology, engineering, or mathematics (STEM) related coursework.

(ii) All applicants for a forensic analyst license in latent print examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(iii) IAI Certification Requirement for Unaccredited Laboratory. All licensed latent print examination analysts and applicants who are not employed by a laboratory accredited by the Commission are required to be certified by the International Association for Identification (IAI) under the IAI's Latent Print Certification program and are required to provide proof of certification upon request. Licensees are required to notify the Commission of any change in the status of their IAI certification within ten (10) business days of any changes.

(D) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(E) Crime Scene Processing Technician. An applicant for a forensic technician license in crime scene processing must successfully complete the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(F) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must successfully complete the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later) and must complete a minimum of 240 hours of forensic-related training courses which may include in-house mentorship training.

(G) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction must have twelve-semester credit hours of college-level courses or equivalent coursework approved by the Commission that includes fluid dynamics, math, and physics; a forty-hour crime scene reconstruction course approved by the Commission; 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs; and have successfully completed the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(H) Crime Scene Reconstruction Analyst, with specific recognition in bloodstain pattern analysis. An applicant for a forensic analyst license in crime scene reconstruction, with specific recognition in bloodstain pattern analysis, must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour advanced courses taught by two different instructors in blood pattern analysis with syllabi accepted by the International Association of Bloodstain Pattern Analysts (IABPA) or the International Association for Identification (IAI) for certification, a forty-hour fluid dynamics course approved by the Commission, a forty-hour math and physics course approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling, courtroom demonstratives, and 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs, and have successfully completed the Texas Commission on Law Enforcement

Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(I) Crime Scene Reconstruction Analyst, with specific recognition in shooting incident reconstruction and crime scene reconstruction. An application for a forensic analyst license in crime scene reconstruction, with specific recognition in shooting incident reconstruction must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour shooting incident reconstruction courses taught by two different instructors in shooting incident reconstruction with syllabi accepted by the International Association for Identification (IAI), the Association of Firearm and Toolmark Examiners (AFTE), or the Association for Crime Scene Reconstruction (ACSR) for certification and approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling and courtroom demonstrations, 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs, and have successfully completed the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(3) Exemptions from Specific Coursework Requirements.

(A) Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.

(B) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements, including the three-semester credit hour (or equivalent) college-level statistics course component for licensure.

(C) An applicant for a forensic analyst license limited to the crime scene investigation analyst category of licensure is not required to fulfill the three-semester credit hour (or equivalent) college-level statistics course component for licensure.

(g) Work Experience.

(1) Crime Scene Reconstruction Analyst. An applicant for any forensic analyst license in crime scene reconstruction must have a minimum of five years' experience working in crime scene settings.

(2) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must have a minimum of one year of experience working in crime scene settings.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a forensic analyst license under this section must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete

the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their employing agency's director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Modified General Forensic Analyst Licensing Exam. Forensic Technicians in any disciplines set forth in this subchapter, including latent print processing technicians, crime scene processing technicians and crime scene investigation analysts, may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.

(i) Continuing Education Requirements. All continuing education requirements outlined in §651.208(g) - (i) of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal) apply to this section.

(j) [(h)] Proficiency Monitoring Requirement.

(1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must demonstrate the applicant participates in the laboratory's process for intraagency [intra-laboratory] comparison, interagency [inter-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(2) Requirement for Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in an Unaccredited Forensic Discipline. An applicant who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must demonstrate the applicant participates in the laboratory or employing entity's process for intraagency [intra-laboratory] comparison, interagency [inter-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intraagency [intra-laboratory] comparison, inter-laboratory comparisons, proficiency testing, or observation-based performance monitoring requirements in paragraph (1) or (2) of this subsection as of the date of the analyst's application must be provided on the Proficiency Moni-

toring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework.

(4) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation must include written proof of the Forensic Science Commission's approval described in (5) of this subsection with the Proficiency Monitoring Certification form required in (3) of this subsection. The applicant must include written documentation of performance in conformance with expected consensus results for the laboratory or employing entity's Commission-approved activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring.

(5) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation seeking approval of proficiency monitoring activities or exercise(s) must seek prior approval of the activities or exercise(s) from the Commission.

(6) Special Proficiency Testing Requirements for Latent Print Analysts and Latent Print Processing Technicians.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency [~~interlaboratory~~] comparison or developed internally by the employing laboratory or entity through participation in an interagency [~~interlaboratory~~] comparison or intraagency [~~intralaboratory~~] comparison.

(C) All latent print examiner and latent print processing technician proficiency tests selected shall be developed and validated in accordance with the requirements set forth in Sections 4.2 and 4.3 of the Organization of Scientific Area Committees for Forensic Science (OSAC) 2022-S-0012 Friction Ridge Subcommittee's Standard for Proficiency Testing in Friction Ridge Examination.

(7) Special Proficiency Testing Requirements for Crime Scene Processing Technicians, Crime Scene Investigation Analysts, and Crime Scene Reconstruction Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(k) [(j)] Employing Laboratory or Agency Quality Requirement for Forensic Analysts. Applicants for a forensic analyst license under this section must be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic

discipline as published on the Commission's website and updated January 15 of each calendar year.

(l) [(j)] License Term and Fee.

(1) A Forensic Analyst license issued under this section shall expire two years from the date the applicant is granted a license.

(2) Application Fee. A Forensic Analyst or Forensic Technician license applicant or current licensee under this section shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians

(C) License Reinstatement fee of \$220; or

(D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts.

(m) [(k)] Forensic Analyst License Renewal. [~~Renewal of a Forensic Analyst License.~~] Applicants for renewal of a Forensic Analyst License must comply with §651.208 of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal) [~~of this subchapter~~].

(n) [(l)] Forensic Analyst License Expiration and Reinstatement. [~~Expiration and Reinstatement of a Forensic Analyst License.~~] A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).

(o) [(m)] Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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

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TRD-202401937

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-0661



37 TAC §651.207, §651.208

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code Chapter §651.207, Forensic Analyst Licensing Requirements, Including License Term, Fee, and Procedure for Denial of Application and Reconsideration, and §651.208, Forensic Analyst and Technician License Renewal. The amendments change the Commission's current policy for forensic analyst and forensic technician licenses to expire on the last day of the licensee's birth month to apply only to current licensees who were initially licensed before January 1, 2024, and are renewing on or before December 31, 2026. Under the proposed rule changes, new license applicants will expire two years from the date of initial licensure. The proposed rule changes also expressly expand the eligibility requirements for the Commission's General Forensic Analyst Licensing Exam to include eligible voluntary license applicants employed at a laboratory or agency. Under the current rules, the eligibility is implied (but not expressly stated) since voluntary licensees are required to take the exam.

Background and Justification. Under the current license expiration rules, forensic analyst and forensic technician licenses expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. At the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years during the Fall months, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The Commission recently transitioned to last-day-of-birth-month expiration dates, which included a pro-ration of initial licensure and renewal fees and applicable continuing forensic education hours. The transition has eased the burden on staff and licensees processing license renewals for current licensees at the same time each year. However, the same dilemma does not apply for new applicants for licensure as they apply and are granted an initial license at different times throughout the year. Therefore, the rule changes adjust the last-day-of-birth-month expiration policy to apply only to current licensees who were initially licensed before January 1, 2024 and are renewing on or before December 31, 2026 and propose that new license applicants expire two years from the date of initial licensure. These amendments are necessary to reflect adoptions made by the Commission at its April 26, 2024 quarterly meeting at which the Commission voted to change its

current license expiration policy for new applicants to expire two years from the date of initial licensure.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is a more efficient license term process, not requiring any proration of fees or continuing forensic education hours, for forensic analysts and forensic technicians applying for a license for the first time in the State of Texas.

Fiscal Impact on Small and Micro-businesses and Rural Communities. There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule requires payment of regular licensing fees by new applicants rather than a prorated fee under the former birth month expiration policy; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not expand, limit, or repeal an existing regulation; 7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined

in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024 to be considered by the Commission.

Statutory Authority. The amendments are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §§3-a and its authority to license forensic analysts under §4-a(b).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training.

(a) **Issuance.** The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) **License Term.** A Forensic Analyst or Forensic Technician license holder must renew the license holder's license every two years on the day before the issuance of the initial license with the exception of §651.208(b) of this subchapter (relating to Renewal Term).

(c) ~~[(b)]~~ **Application.** Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners;

(C) [(A)] Pro-rated Fees for Certain License {Licenses} Renewals. This subsection applies to licensees initially licensed before January 1, 2024 who are renewing on or before December 31, 2026. Initial Application fee of \$220 for Analysts and \$150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term ~~[Initial License Term]~~ under §651.208(b) ~~[subsection (b)]~~ of this subchapter ~~[section]~~ exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) ~~[subsection (b)]~~ of this subchapter ~~[section]~~ is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

(D) [(B)] Temporary License fee of \$100;

(E) [(C)] Provisional License fee of \$110 for Analysts and \$75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an

additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(F) [(D)] License Reinstatement fee of \$220;

(G) [(E)] De Minimis License fee of \$200 per ten (10) licenses;

(H) [(F)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(I) [(G)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) [(e)] Minimum Education Requirements.

(1) **Seized Drugs Analyst.** An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) **Seized Drugs Technician.** An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) **Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)).** An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) **Toxicology Technician.** An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) **Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician).** An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) **Firearm/Toolmark Analyst.** An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) **Firearm/Toolmark Technician.** An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) **Materials (Trace) Analyst.** An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(c) ~~(d)~~ Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science

(Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) ~~(e)~~ Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) ~~(f)~~ Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education re-

quirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee

each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) [(H)] Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) [(H)] Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

§651.208. *Forensic Analyst and Forensic Technician License Renewal.*

(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.

(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License is [will be] every two years from the date the initial application was granted unless the applicant is a licensee who was initially licensed before January 1, 2024, and is renewing their license on or before December 31, 2026. Licensees renewing between January 1, 2024 and December 31, 2026 expire on the last day of the license holder's birth month.

(c) Renewal Fees. The biennial renewal fee is \$200 for Forensic Analysts and \$130 for Forensic Technicians/Screeners. Renewal fees [Fees] for Forensic Analysts and Forensic Technicians initially licensed before [seeking to renew their licenses between] January 1, 2024 and renewing on or before December 31, 2026 [2025], will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as described [describe] in subsection (b) of this section. The pro-rated fee

will be assessed at \$8.33 per month (for Forensic Analysts) and \$5.42 per month (for Forensic Technicians).

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.

(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:

(1) signed by the licensee's authorized laboratory representative; and

(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation.

[(H)] An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide the following items.[:]

(1) [(A)] an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(A) [(H)] signed by the licensee's authorized laboratory representative; and

(B) [(H)] designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(2) [(B)] written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(3) [(C)] written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Com-

mission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in subsection (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in subsection (g)(3)(A) and (B) of this section for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

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 May 1, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

37 TAC §651.401

The Texas Forensic Science Commission (Commission) proposes new rule 37 Texas Administrative Code §651.401, Notice and Hearing, to reestablish the Commission's notice and hearing process previously repealed due to a non-substantive numbering error.

Background and Justification. The Commission recently repealed its notice and hearing process under 37 Texas Administrative Code §651.402 to correct a numbering error. This proposal establishes a policy for the Commission to notify license holders and crime laboratories that are the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the Code of Professional Responsibility, or violation of another rule or order of the Commission. The rulemaking further establishes the Commission's hearing process and the process for appeals by license holders and crime laboratories before the Judicial Branch Certification Commission. The rulemaking also provides the option for disposition by agreement between the Commission and subject parties.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the new rule.

Local Employment Impact Statement. The proposal has no effect on local economy; therefore, no local employment im-

pact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the proposed new rule is in effect, the anticipated public benefit includes the correct numbering of the sections of the rules and an established policy for notice, hearing, and appeal for respondents.

Fiscal Impact on Small and Micro-businesses and Rural Communities. There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed new rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rule will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed new rule does not create or eliminate a government program; 2) implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed new rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed new rule does not require a fee; 5) the proposed new rule does not create a new regulation; 6) the proposed new rule does not increase the number of individual's subject to regulation; and 7) the proposed new rule has a neutral effect on the state's economy.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024 to be considered by the Commission.

Statutory Authority. The new rule is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01. It is also promulgated

under Code of Criminal Procedure, Art. 38.01, § 4-c, which establishes the disciplinary action process.

Cross reference to statute. The proposal implements Code of Criminal Procedure, Art. 38.01, § 4-c.

§651.401. Notice and Hearing Request.

(a) The Commission must give written notice by certified mail to a license holder or crime laboratory that is the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the code of professional responsibility, or violation of another rule or order of the Commission. The notice must:

(1) include a brief summary of the professional negligence, professional misconduct, violation of the code of professional responsibility, or other rule or statutory violation;

(2) state the disciplinary action proposed by the Commission; and

(3) inform the license holder or crime laboratory of the right to a hearing before the Judicial Branch Certification Commission on the occurrence of the professional negligence or misconduct or rule violation, the imposition of a disciplinary action, or both.

(b) for purposes of this subchapter, "disciplinary action" against a license holder or crime laboratory includes any of the following actions: revocation or suspension of an individual's license or a crime laboratory's accreditation; refusal to renew an individual's license or a crime laboratory's accreditation; reprimand of a license holder or crime laboratory, or probated suspension.

(c) Hearing Request. Not later than the 20th day after the date the license holder or crime laboratory receives the notice under subsection (a) of this section, the license holder or crime laboratory may accept the Commission determination or disciplinary action or request a hearing by submitting a written request to the Judicial Branch Certification Commission to contest the findings of fact or conclusions of law, the occurrence of the negligence, misconduct, or violation, or the imposition of a disciplinary action, as applicable. If the license holder or crime laboratory fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission. Hearing requests may be submitted via email to info@fsc.texas.gov.

(d) Judicial Branch Certification Commission Hearing. If the license holder or crime laboratory requests a hearing, the Judicial Branch Certification Commission must conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the negligence, misconduct, or violation occurred. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission must conduct the hearing and any appeal of that Commission's decision, in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(e) Disposition by Agreement. Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order. The Commission may approve or reject the agreement. If the Commission rejects the agreement, the respondent has a right to a hearing on the disciplinary matter before the Judicial Branch Certification Commission per subsection (d) of this section.

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

Filed with the Office of the Secretary of State on May 1, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-0661



37 TAC §651.402

The Texas Forensic Science Commission (Commission) proposes the repeal of 37 Texas Administrative Code §651.402.

Background and Justification. This repeal makes a non-substantive edit to change the section's number to §651.401. The current numbering of the subchapter begins with §651.402 and should begin with §651.401. The Commission will repropose the rule with the correct number—§651.401 in a separate rulemaking.

Fiscal Impact on State and Local Government. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the repeal.

Local Employment Impact Statement. The repeal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. The repeal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit includes the correct numbering of the sections of the rules.

Fiscal Impact on Small and Micro-businesses and Rural Communities. There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of the repeal. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this repeal and that this repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed repeal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the repeal will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the repeal does not create or eliminate a government program; 2) implementation of the repeal does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the repeal does not increase or decrease future legislative appropriations to the agency; 4) the repeal does not require a fee; 5) the repeal does not create a new regulation; 6) the repeal does not increase the number of individual's subject to regulation; and 7) the repeal has a neutral effect on the state's economy.

Request for Public Comment. The Commission invites comments on the repeal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024 to be considered by the Commission.

Statutory Authority. The repeal is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

This rulemaking is also proposed under Texas Government Code Section 2001.003(6)(B), which defines "rule" to include repeals.

§651.402. Notice and Hearing Request.

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 May 1, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.18 - 809.21

Subchapter C. Eligibility for Child Care Services, §§809.42, 809.51, and 809.56

Subchapter D. Parent Rights and Responsibilities, §809.73

Subchapter E. Requirements to Provide Child Care, §§809.92 - 809.94, and 809.96

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134, and 809.136

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments to Chapter 809:

--include changes to the Texas Rising Star program based on the program's four-year review as required by Texas Government Code §2308.3155(b);

--clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period;

--include the requirement that the Parent Share of Cost (PSoC) cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services;

--add children with disabilities as a priority population for child care using contracted slots;

--remove rule provisions that expired on December 1, 2023, and remove specific dates for provisions that became effective on December 1, 2023; and

--change "provider reimbursement" to "provider payment" throughout the rules to align with §809.93, which requires that regulated child care providers (which exclude relatives) be paid prospectively rather than through reimbursement.

Texas Rising Star Four-Year Review

Texas Government Code §2308.3155(b) requires a regular review of the Texas Rising Star program with stakeholder input, and §809.130(e) of this chapter requires the review to take place every four years.

Beginning in July 2023, TWC's Child Care and Early Learning (CC&EL) Division convened a workgroup to review the guidelines. The workgroup included child care program directors from around the state; early childhood advocacy organization representatives; professional development providers; Local Workforce Development Board (Board) staff; and representatives from TWC, the Texas Health and Human Services Commission's (HHSC's) Child Care Regulation (CCR) division, the State Center for Early Childhood, and the Children's Learning Institute (CLI). The workgroup presented several recommendations for modifications to the Texas Rising Star guidelines.

The workgroup also recommended rule changes under Subchapter G, Texas Rising Star Program. TWC considered and incorporated the following workgroup recommendations into the proposed rule amendments:

--Include reference to the points thresholds for high and medium-high CCR deficiencies established in the Texas Rising Star guidelines to the requirements for initial Texas Rising Star certification and to the standards for probationary status.

--Allow Texas Rising Star certified providers to retain certification for up to six months if the program undergoes a facility change and is issued an initial permit from CCR.

Additionally, as part of the Texas Rising Star Program review, CC&EL staff identified the following rule provisions for amendments:

--Modify the CCR licensing review period from 12 months to 6 months.

--Clarify that an Entry Level designated provider may receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

--Make a technical correction to clarify that TWC staff, rather than the three-member Commission, reviews and approves Texas Rising Star mentor education waivers.

--Clarify Texas Rising Star staff background checks as they relate to CCR background check requirements.

--Remove PSoC reductions for selecting a Texas Rising Star provider.

12-Month Eligibility Period for Child Care during Job Search

The rule amendments clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period, as allowed under 45 Code of Federal Regulations (CFR) §98.21(a)(2)(iii). TWC notes that this is not a change in policy. Current rule language in §809.56 of this chapter states that eligibility for child care during job search is limited to three months unless the parent becomes employed and meets the work requirements before the end of the job search period. If the parent meets work requirements, child care would continue for 12 months, inclusive of the three-month job search period.

The amended rules retain these time frames, but the rule language is amended to clarify that the child care eligibility period is for 12 months provided that the parent meets work requirements within the first three months of child care.

Capping the PSoC at 7 Percent of Family Income

The amended rules include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended Child Care Development Fund (CCDF) regulations in CFR 45 §98.45(l), as published in the Federal Register (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

Remove Expired Provisions

On September 13, 2022, TWC amended Chapter 809 with certain provisions set to be effective prior to December 1, 2023, and subsequently replaced by provisions set to be effective on December 1, 2023. The provisions effective prior to December 1, 2023, and those set to be effective on December 1, 2023, were adopted and published in the *Texas Register* (47 TexReg 6437). The affected sections are:

--§809.18. Maintenance of a Waiting List

--§809.19. Assessing the Parent Share of Cost

--§809.20. Maximum Provider Payment Rates

--§809.93. Provider Payment

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:

§809.2. Definitions

Section 809.2 is amended to change "provider reimbursement" to "provider payment" in the definitions of "child care contractor" and "child care subsidies" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B:

§809.18. Maintenance of a Waiting List

Section 809.18 is amended to remove the provisions that are no longer effective as of December 1, 2023, and leaves the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, removed the Board-determined process for determining the child is potentially eligible for services and the frequency in which parent information is updated and maintained. The rules also created a statewide policy to require that Boards contact the parent every three months and remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to remove the provisions that are no longer effective as of December 1, 2023, and retains the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, stated that the PSoC amount is established by TWC and determined on a sliding fee scale based on the family size and gross monthly income and represented by a percentage of the state median income, or SMI.

The rules effective December 1, 2023, removed the requirement that Board policy include the general criteria for determining affordability of the Board's PSoC, as the PSoC is no longer determined or established by the Board. The rules also removed the requirement that Boards have a definition of what constitutes frequent terminations and its process for assessing PSoC affordability.

Similarly, because the Board no longer determines the PSoC, the rules removed the requirement that Boards with frequent terminations for parent failure to pay the PSoC must reexamine their PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

The proposed rule amendments also remove the option for Boards to reduce the PSoC based on the parent selection of Texas Rising Star program providers. The intent of this reduction was to encourage parents to choose a Texas Rising Star program provider. However, because participation in the Texas Rising Star program is now a requirement for all CCS providers, this PSoC reduction is no longer necessary.

Additionally, the proposed rule amendments include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.45(l). The US Department of Health and Human Services published the amended regulations in the Federal Register (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20 is amended to rename the section "Maximum Provider Payment Rates" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that regulated child care providers be paid prospectively rather than as a reimbursement. This change aligns with the recently amended CCDF regulations in 45 CFR 45 §98.45(m), which requires states to pay providers in advance of or at the beginning of the delivery of child care services.

TWC notes that unregulated relative providers will continue to be paid as a reimbursement rather than prospectively. This is in accordance with the CCDF regulation language in 45 CFR 45 §98.45(m), which allows states to exclude certain types of providers from prospective payments if paying in advance is not a generally accepted practice for that provider type. TWC contends that there is no generally accepted practice of parents paying in advance for unregulated relatives caring for children related to them.

This section is also amended to remove the age groups used for payments that are no longer effective as of December 1, 2023, and retains the age groups that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, aligned the age groups for payment with the age groups defined by CCR as required by Texas Government Code §2308.315. The new age groups for payment are:

- Infants ages 0 through 11 months
- Infants ages 12 through 17 months
- Toddlers ages 18 through 23 months
- Toddlers age 2 years
- Preschool age 3 years
- Preschool age 4 years
- Preschool age 5 years
- School-age 6 years and older

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 is amended to rename the section "Determining the Amount of the Provider Payment" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that child care providers be paid prospectively rather than as a reimbursement.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC proposes the following amendments to Subchapter C:

§809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42(b) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Boards must not conduct a full eligibility redetermination following the initial 3-month job search period described in §809.56. Boards must only verify that the parent is meeting the work requirements outlined in §809.56(c).

§809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

Section 809.51(a) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Similarly, the amended language also removes the 12-month redetermination exception during the 12-month eligibility period for children experiencing homelessness. Section 809.52 regarding child care for children experiencing homelessness states that the eligibility period is for 12 months; therefore, the exception for redetermination prior to the end of the 12-month eligibility period is not necessary for children experiencing homelessness.

§809.56. Child Care during Initial Job Search

Section 809.56(c) is amended to clarify that eligibility for child care during initial job search is for 12 months. The 12-month eligibility period consists of an initial 3-month job search period. The previous rule language stated that child care is limited to 3 months but shall continue for the remainder of a 12-month eligibility period if the parent meets work requirements before the end of the 3-month job search period. The amended language shifts the emphasis of the eligibility period from a 3-month initial period within a 12-month period that is contingent upon work requirements to a full 12-month eligibility period, with a 3-month initial job search period. The continuation of child care for the remainder of the 12-month eligibility period will continue to be contingent upon the parent meeting work requirements in §809.56(c). TWC makes this change to demonstrate compliance more fully with 45 CFR §98.21(a)(2)(iii).

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC proposes the following amendments to Subchapter D:

§809.73. Parent Reporting Requirements

Section 809.73(a) is amended to remove the references to child care during initial job search as a separate eligibility period from the general 12-month eligibility period described in §809.41. This change clarifies that the eligibility period for child care during job search is for 12 months and is aligned with the general 12-month eligibility period for child care services.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC proposes the following amendments to Subchapter E:

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 is amended to change "reimbursement" to "payment" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

§809.93. Provider Reimbursement

Section 809.93 is amended to rename the section from "Provider Reimbursement" to "Provider Payment" and remove "reimbursement" from the section to align with the requirement that child care providers be paid prospectively rather than through reimbursement.

Section 809.93 is amended to remove the effective date of December 1, 2023, specific to §809.93(f) relating to the requirement that Boards pay regulated child care providers prospectively every two weeks based on the enrollment authorization.

§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation

Section 809.94 is amended to remove "reimbursement" from the language to align with §809.93 requiring providers be paid prospectively rather than through reimbursement.

§809.96. Contracted Slots Agreements

Section 809.96 is amended to add children with disabilities as a priority population that can be served using contracted slots agreements. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.30(b), which requires states to increase the use of grants or contracts for the delivery of child care services, including at a minimum for children in underserved areas (for example, in child care deserts), for infants and toddlers, and for children with disabilities.

TWC's current rules at §809.96(e)(1) already provides for contracted slots in child care deserts and underserved areas, and §809.96(e)(4) provides for contracted slots for infant and toddler child care.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Section 809.130(d)(4) is amended to state that the Texas Rising Star guidelines include a description of high and medium-high CCR deficiencies points thresholds required in §809.132 relating to CCR deficiencies that impact the certification status of a Texas Rising Star certified provider.

§809.131. Requirements for the Texas Rising Star Program

Section 809.131(a) is amended to clarify that this section applies to a child care provider's initial certification under the Texas Rising Star Program. Specifically, the requirement for a permanent (non-expiring) license or registration is a requirement for initial certification. A Texas Rising Star certified provider's certification will not be affected if the provider changes its operations that requires CCR to issue an initial license or registration such as changes in ownership or location coupled with changes in administrative or program staff and previous noncompliance with minimum standards.

Section 809.131(a)(2) is amended to include a required points threshold for high and medium-high CCR deficiencies for a provider to meet Texas Rising Star certification requirements. TWC makes this change to require initial certification to include a CCR deficiency points threshold similar to the requirement for an Entry Level Designation.

Section 809.131(a)(2) is also amended to reduce the Texas Rising Star review period of CCR licensing deficiencies from 12 months to 6 months. This change will support the review of a child care provider's most recent licensing deficiencies to more accurately describe the current status of quality of care being provided. This change also aligns with the current 6-month CCR deficiency history for probationary and suspension periods.

Section 809.131(b)(2) is amended to clarify the current practice that the points threshold for Entry Level Designation is described in the Texas Rising Star guidelines. Section 809.131(d)(2) is also amended to reduce the licensing deficiency period from 12 months to 6 months.

Section 809.131(e) is amended to clarify that beginning on the 18th month of Entry Level designation, the provider's licensing history will be reviewed and if it is determined that the provider will not be eligible by the end of the 24th month based on the most recent 6-month licensing history, the provider will not be

able to receive referrals for new families. TWC has noted instances in which a provider would be eligible for certification following the 18th month but was not allowed to receive new referrals because of the current rule language. This rule change will allow a provider to receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

§809.132. Impacts on Texas Rising Star Certification

Section 809.132(a)(4) is amended to remove references to the number of high or medium-high CCR deficiencies that would place a Texas Rising Star certified provider on suspension status. The amended language states that a certified provider is placed on suspension status if the CCR deficiency points exceed the probationary status points threshold described in the Texas Rising Star guidelines.

Section 809.132(b) is amended to clarify that a provider placed on probation due to a "star level drop" will be reinstated at the provider's previous star level if CCR does not cite any additional specified star-level drop deficiencies during the probationary period. The previous rule language in §809.132(e) did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation due to a star level drop. TWC makes this change to clarify that the additional deficiencies are related to the star level drop probationary deficiencies.

Similarly, §809.132(c) is amended to clarify that providers on probationary status due to specified probationary deficiencies and subsequently placed on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any additional probationary deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(d) is amended to remove the total number of high or medium-high deficiencies required to place a certified provider on a probationary period. The amended language adds that certified providers whose total points for high or medium-high deficiencies fall within the points threshold described in the Texas Rising Star guidelines will be placed on a six-month probationary period.

Additionally, as with §809.132(c), §809.132(d) is amended to clarify that providers on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any high or medium-high deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(b) through (d) is amended to reduce the licensing deficiency period from 12 months to 6 months.

TWC also makes technical changes in §809.132(c) and (d) to align applicable language in these two subsections.

TWC removes the previous §809.132(e), which stated that providers not on suspension status with a star level drop shall be reinstated at the former star level if no citations in subsections (b) through (d) are cited within six months. As explained previously, this language did not specify which deficiencies would be applicable to reinstating the provider's star level; thus, TWC has amended subsections (b) through (d) to clarify the process

for reinstating a star level based on the deficiencies specific to each level of probationary status.

Section 809.132 is also amended to change "reimbursement" to "payment" to align with §809.93, which requires that providers be paid prospectively and not as a reimbursement.

§809.133. Application and Assessments for Texas Rising Star Certification

Section 809.133 is amended to remove subsection (h), which requires Boards to be responsible for the tasks assigned to the Texas Rising Star assessor entity, within their respective local workforce development areas, until the assessor entity is procured and designated by TWC. TWC has designated an assessor entity and this provision is no longer applicable.

§809.134. Minimum Qualifications for Texas Rising Star Staff

Section 809.134(a) is amended to modify the background check requirement for Texas Rising Star staff. The intent of the amended language is to clarify that the background check does not need to be conducted using the same procedures and criteria used by CCR to conduct background checks for child care providers and caregivers as required by Chapter 745 of the HHSC child care regulations, which requires a Federal Bureau of Investigation fingerprint check. The background checks required under Chapter 745 are designed for caregivers and individuals who have unsupervised contact with children in a child care facility. Texas Rising Star staff do not meet this standard and are not required to undergo this type of background check.

However, TWC continues to emphasize that Texas Rising Star staff should undergo a standard background check as part of the basic requirements for employment. The amended language requires the Board and the TWC's designated Texas Rising Star assessment entity to conduct a background check on each staff member prior to hiring and again every five years.

Section 809.134(d) is amended to clarify that TWC, rather than the three-member Commission, may grant the waiver regarding the minimum education requirements for Texas Rising Star mentors.

§809.136. Roles and Responsibilities of Texas Rising Star Staff

Section 809.136 is amended to remove the requirements for dual-role staff (that is, individuals who perform the functions of a Texas Rising Star mentor and assessor). With the separation of mentors as Board staff and assessors as staff of the designated assessment entity, the system will no longer have individuals performing dual roles, making these requirements unnecessary.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has 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 has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, 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 Assessment 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 remove rule provisions that expired on December 1, 2023, and remove specific dates in provisions that became effective on December 1, 2023.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has 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, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve program quality, efficiency, and operational consistency.

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

The Texas Rising Star 4-Year review involves the formation of a stakeholder workgroup consisting of Boards, child care advocates, and child care providers. CC&EL conducted workgroup meetings from August to December 2023 to get input on recommended changes to the Texas Rising Star program. Further, CC&EL conducted five public stakeholder meetings in February 2024 to solicit input on the Texas Rising Star program. The meetings were held in Abilene, Round Rock, Dallas, Houston, and McAllen.

CC&EL informed stakeholders of local stakeholder meetings via email outreach by the Boards. CC&EL also received input via TRS4YearReview@twc.texas.gov.

Information on the potential changes and recommendations from the workgroup will be posted at: <https://www.twc.texas.gov/programs/texas-rising-star/2023-workgroup>. Information will also be provided at the stakeholder meetings.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than June 17, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

PART VI.

STATUTORY AUTHORITY

The rule is proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment [reimbursement] process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child Care Desert--An area described in Texas Labor Code [§] §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

(5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.

(6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(7) Child care subsidies--Commission-funded child care payments [reimbursements] to an eligible child care provider for the direct care of an eligible child.

(8) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(9) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(10) Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; or

(C) an undergraduate degree from an institution of higher education.

(11) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.

(12) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(13) Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(14) Improper payments--Any payment of Child Care Development Fund (CCDF) funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(15) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(16) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR pursuant to Texas Human Resources Code[§] §42.052(c).

(17) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(18) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(19) Protective services--Services provided when a child:

(A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;

(B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(20) Provider--A provider is defined as a:

- (A) regulated child care provider;
- (B) relative child care provider; or
- (C) listed family home subject to the requirements in §809.91(e) of this chapter.

(21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

- (A) licensed by CCR;
- (B) registered with CCR; or
- (C) operated and monitored by the United States military services.

(22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

- (A) grandparent;
- (B) great-grandparent;
- (C) aunt;
- (D) uncle; or
- (E) sibling (if the sibling does not reside in the same household as the eligible child).

(23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(25) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.

(26) Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

- (A) designated as an Entry Level Provider;
- (B) certified as a Two-Star Provider;
- (C) certified as a Three-Star Provider; or
- (D) certified as a Four-Star Provider.

(27) Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
- (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or
- (C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 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 April 30, 2024.

TRD-202401905
 Les Trobman
 General Counsel
 Texas Workforce Commission
 Earliest possible date of adoption: June 16, 2024
 For further information, please call: (512) 850-8356



SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.18 - 809.21

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.18. Maintenance of a Waiting List.

~~[(a) The following provisions are effective prior to December 1, 2023:]~~

~~[(1) A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.]~~

~~[(2) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:]~~

~~[(A) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and]~~

~~[(B) the frequency in which the parent information is updated and maintained on the waiting list.]~~

~~[(3) A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or Head Start/Early Head Start (HS/EHS) partnership as described in §809.22 of this chapter to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.]~~

~~[(b) The following provisions are effective December 1, 2023:]~~

~~(a) [(4)] A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.~~

~~(b) [(2)] A Board shall ensure that the child is potentially eligible for child care services prior to placing the child on the waiting list.~~

~~(c) [(3)] A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this subchapter [chapter], to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.~~

(d) [(4)] A Board shall contact the parent every three months and shall remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. *Assessing the Parent Share of Cost.*

[(a)] The following provisions are effective prior to December 1, 2023:}]

[(1)] For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically, §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:}]

[(A)] A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:}]

[(i)] being assessed to all parents, except in instances when an exemption under subparagraph (B) of this paragraph applies;}]

[(ii)] being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to paragraph (4) of this subsection, which also may consider the number of children in care;}]

[(iii)] being an amount that is affordable and does not result in a barrier to families receiving assistance;}]

[(iv)] being assessed only at the following times:}]

[(I)] initial eligibility determination;}]

[(II)] 12-month eligibility redetermination;}]

[(III)] upon the addition of a child in care;}]

[(IV)] upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and}]

[(V)] upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(e) of this chapter; and}]

[(v)] not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in clause (ii) of this subparagraph, except upon the addition of a child in care as described in clause (iv)(III) of this subparagraph.}]

[(B)] Parents who are one or more of the following are exempt from paying the parent share of cost:}]

[(i)] Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;}]

[(ii)] Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;}]

[(iii)] Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or}]

[(iv)] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(e) of this chapter, unless DFPS assesses the parent share of cost.}]

[(C)] Teen parents who are not covered under exemptions listed in subparagraph (B) of this paragraph shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.}]

[(2)] A Board shall establish a policy stating whether or not the Board will reimburse providers when parents fail to pay the parent share of cost. If the Board does not reimburse providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.}]

[(3)] A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:}]

[(A)] a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to subparagraph (B) of this paragraph, and a possible temporary reduction pursuant to paragraph (5) of this subsection before the Board or its child care contractor may terminate care under this section;}]

[(B)] general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under paragraph (5) of this subsection;}]

[(C)] maintenance of a list of all terminations due to failure to pay the parent share of cost, for use when conducting evaluations of affordability, as required under subparagraph (D) of this paragraph; and}]

[(D)] the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to paragraph (4) of this subsection.}]

[(4)] A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.}]

[(5)] The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.}]

[(6)] If the parent is not covered by an exemption as specified in paragraph (1)(B) of this subsection, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.}]

[(7)] If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.}]

[(8)] A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection upon the parent's selection of a Texas Rising Star-certified provider. Such Board policy shall ensure:}]

[(A)] that the parent continues to receive the reduction if:}]

[(i)] the Texas Rising Star provider loses Texas Rising Star certification; or}]

~~[(ii) the parent moves or changes employment within the workforce area and no Texas Rising Star-certified providers are available to meet the needs of the parent's changed circumstances; and]~~

~~[(B) the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star-certified provider to a non-Texas Rising Star-certified provider.]~~

~~[(9) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection upon the child's referral for part-time or blended care. Such Board policy shall ensure that:]~~

~~[(A) the parent no longer receives the reduction if the referral is changed to full-time care; and]~~

~~[(B) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star-certified provider (as defined in paragraph (8) of this subsection) and a child's part-time or blended care referral will receive the greater of the two discounts.]~~

~~[(b) The following provisions are effective on December 1, 2023:]~~

~~(a) [(+) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title [(relating to Allocations)], and specifically [§] §800.58 of this title [(relating to Child Care)]), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:~~

~~(1) [(A)] The parent share of cost shall [be]:~~

~~(A) [(+)] be assessed to all parents, except in instances when an exemption under paragraph (3) of this subsection [subparagraph (C) of this paragraph] applies; and~~

~~(B) [(+)] be established by the Commission and determined by a sliding fee scale based on the family's size and gross monthly income determined in §809.44 of this chapter and as represented by a percentage of the state median income (SMI) up to 85 percent SMI; and~~

~~(C) not exceed 7 percent of the family income, regardless of the number of children receiving child care services.~~

~~(2) [(B)] A Board shall assess the parent share of cost in accordance with subsection (a)(1)(B) of this section [subparagraph (A)(ii) of this paragraph] and in a manner that results in the parent share of cost:~~

~~(A) [(+)] being assessed only at the following times:~~

~~(i) [(+)] initial eligibility determination;~~

~~(ii) [(+)] 12-month eligibility redetermination;~~

~~(iii) [(+)] upon the addition of a child in care;~~

~~(iv) [(+)] upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and~~

~~(v) [(+)] upon resumption of work, job training, or education activities following temporary changes described in §809.51(a) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and~~

~~(B) [(+)] not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination,~~

~~except upon the addition of a child in care as described in clause (A)(iii) of this paragraph [subclause (i)(III) of this subparagraph].~~

~~(3) [(C)] Parents who are one or more of the following are exempt from paying the parent share of cost:~~

~~(A) [(+)] Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;~~

~~(B) [(+)] Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;~~

~~(C) [(+)] Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or~~

~~(D) [(+)] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.~~

~~(4) [(D)] Teen parents who are not covered under exemptions listed in paragraph (3) of this section [subparagraph (C) of this paragraph] shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.~~

~~(b) [(2)] A Board shall establish a policy stating whether or not the Board will pay [reimburse] providers when parents fail to pay the parent share of cost. If the Board does not pay [reimburse] providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.~~

~~(c) [(3)] A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:~~

~~(1) [(A)] a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection [subparagraph (B) of this paragraph], and a possible temporary reduction pursuant to subsection (d) of this section [paragraph (4)] of this subsection before the Board or its child care contractor may terminate care under this section;~~

~~(2) [(B)] a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (d) of this section [paragraph (4) of this subsection]; and~~

~~(3) [(C)] maintenance of a list of all terminations due to failure to pay the parent share of cost.~~

~~(d) [(4)] The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.~~

~~(e) [(5)] If the parent is not covered by an exemption as specified in subsection (a)(3) of this section [paragraph (1)(C) of this subsection], then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.~~

~~(f) [(6)] If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.~~

~~[(7) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the parent's selection of a Texas Rising Star-certified provider. Such Board policy shall ensure:]~~

~~[(A) that the parent continues to receive the reduction if:]~~

~~[(i) the Texas Rising Star provider loses Texas Rising Star certification; or]~~

~~[(ii) the parent moves or changes employment within the workforce area and no Texas Rising Star-certified providers are available to meet the needs of the parent's changed circumstances; and]~~

~~[(B) the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star-certified provider to a non-Texas Rising Star-certified provider.]~~

~~[(g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1) upon the child's referral for part-time or blended care. Such Board policy shall ensure that the parent no longer receives the reduction if the referral is changed to full-time care.]~~

~~[(8) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the child's referral for part-time or blended care. Such Board policy shall ensure that:~~

~~[(A) parent no longer receives the reduction if the referral is changed to full-time care; and]~~

~~[(B) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star-certified provider (as defined in paragraph (7) of this subsection) and a child's part-time or blended care referral will receive the greater of the two discounts.]~~

~~§809.20. Maximum Provider Payment [Reimbursement] Rates.~~

~~(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum provider payment [reimbursement] rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish provider payment [reimbursement] rates for full-day and part-day units of service, as described in §809.93(f) of this chapter, for the following:~~

~~(1) Provider types:~~

~~(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCR;~~

~~(B) Licensed child care homes as defined by CCR;~~

~~(C) Registered child care homes as defined by CCR; and~~

~~(D) Relative child care providers as defined in §809.2 of this chapter.~~

~~[(2) Age groups in each provider type effective prior to December 1, 2023:]~~

~~[(A) Infants age 0 to 17 months;]~~

~~[(B) Toddlers age 18 to 35 months;]~~

~~[(C) Preschool age children from 36 to 71 months; and]~~

~~[(D) School-age children 72 months and older.]~~

~~(2) [(3)] Age groups in each provider type [effective December 1, 2023]:~~

~~(A) Infants ages 0 through 11 months;~~

~~(B) Infants ages 12 through 17 months;~~

~~(C) Toddlers ages 18 through 23 months;~~

~~(D) Toddlers age 2 years;~~

~~(E) Preschool age 3 years;~~

~~(F) Preschool age 4 years;~~

~~(G) Preschool age 5 years; and~~

~~(H) School-age 6 years and older.~~

~~(b) A Board shall establish enhanced payment [reimbursement] rates:~~

~~(1) for all age groups at certified Texas Rising Star provider facilities; and~~

~~(2) only for infant, toddler, and preschool-age children at child care providers that participate in integrated school readiness models for those age groups pursuant to Texas Education Code [.] §29.160.~~

~~(c) The minimum enhanced payment [reimbursement] rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:~~

~~(1) 5 percent greater for a:~~

~~(A) certified Two-Star Provider; or~~

~~(B) child care provider meeting the requirements of subsection (b)(2) of this section;~~

~~(2) 7 percent greater for a certified Three-Star Provider; and~~

~~(3) 9 percent greater for a certified Four-Star Provider.~~

~~(d) Boards may establish a higher enhanced payment [reimbursement] rate than those specified in subsection (c) of this section for certified Texas Rising Star providers, as long as there is a minimum 2 percentage point difference between each star level.~~

~~(e) A Board or its child care contractor shall ensure that providers that are paid [reimbursed] for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's payment [reimbursement] rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher payment [reimbursement] rate described in this subsection.~~

~~(f) The Board shall determine whether to pay [reimburse] providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum payment [reimbursement] rate established in subsection (a) of this section.~~

~~(g) A Board may establish a higher enhanced payment [reimbursement] rate for nontraditional hours, as defined by the Board.~~

~~§809.21. Determining the Amount of the Provider Payment [Reimbursement].~~

(a) The actual payment [~~reimbursement~~] that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum daily rate or the provider's published daily rate, whichever is lower, less the following amounts:

(1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and

(2) Any child care funds received by the parent from other public or private entities.

(b) A Board or its child care contractor shall ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees.

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

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.42, 809.51, 809.56

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.42. Eligibility Verification, Determination, and Redetermination.

(a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.

(b) A Board shall ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination [~~, except for Child Care during Job Search as described in §809.56 of this chapter~~].

§809.51. Child Care during Interruptions in Work, Education, or Job Training.

(a) A child meeting [~~Except for a child experiencing homelessness, as described in §809.52 of this chapter, and for child care during job search, as described in §809.56 of this chapter, if the child met~~] all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and

will receive services during the 12-month eligibility period described in §809.42 of this subchapter [~~chapter~~], regardless of any:

(1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19 of this chapter; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of SMI; and

(B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

§809.56. Child Care during Initial Job Search.

(a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation require-

ments for At-Risk Child Care as described in §809.50 of this subchapter [chapter].

(b) A Board shall allow parents to self-attest that the:

(1) family meets the requirements of subsection (a) of this section; and

(2) family income does not exceed 85 percent of the state median income.

(c) The 12-month eligibility period for child care under this section consists of [~~Child care under this section is limited to~~] an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include a minimum of 12 hours in employment for a single-parent family and a total combined 25 hours in employment for a dual-parent family, are met within the initial three months, eligibility will continue for the remainder of the 12-month eligibility period, [~~a total of 12 months, inclusive of the care provided during the initial job search period;~~] provided that the family income does not exceed 85 percent of the state median income. If the family does not meet minimum activity requirements under this subsection within three months, care must be terminated.

(d) For child care during the initial three-month job search period, the follow applies regarding the parent share of cost:

(1) A Board shall initially assess the parent share of cost at the highest amount based on the family size and number of children in care.

(2) The initially assessed amount will immediately be temporarily reduced to zero. This provision also applies to dual-parent families in which one parent is employed but the family meets the requirements in subsection (a) of this section for child care during initial job search.

(3) If the parent begins to meet participation requirements of subsection (c) of this section within or by the end of the three-month job search period, the parent share of cost shall be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

(e) Eligibility for child care under this section is limited to one initial three-month job search period per family within a 12-month period.

(f) A Board shall ensure that the parent in child care for job search is registered with the state's labor exchange system and has access to appropriate services available through the one-stop delivery network described in §801.28 of this title.

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

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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §809.73

The rule is proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.73. Parent Reporting Requirements.

(a) Boards shall ensure that during the 12-month eligibility period described in §809.41 of this chapter [~~or during the three-month initial job search period and the subsequent eligibility period described in §809.56 of this chapter;~~] parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

(b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

(2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51 of this chapter; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

(c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

(d) A Board shall allow parents to report, and the child care contractor shall take appropriate action, regarding changes in:

(1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19 of this chapter; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.92 - 809.94, 809.96

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for payment [reimbursement] under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter;

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.

(c) Providers shall not charge more than the Board's payment [reimbursement] rate as determined under §809.21 of this chapter to parents:

(1) who are exempt from the parent share of cost assessment under §809.19 of this chapter;

(2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or

(3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.

(d) A Board may develop a policy that allows providers to charge parents more than the assessed parent share of cost in instances where the provider's published rate exceeds the Board's payment [reimbursement] rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section.

(e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:

(1) the specific families that were charged an additional amount above the assessed amount;

(2) the frequency with which each family was charged; and

(3) the amount of each additional charge.

(f) Boards that develop a policy under subsection (d) of this section must:

(1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required co-payment, including a demonstration of how the policy promotes affordability and access for families; and

(2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current payment [reimbursement] rates to provide access to care without additional fees.

(g) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(h) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. Provider Payment [Reimbursement].

(a) A Board shall ensure that payment [reimbursement] for child care is made [paid] only to the provider.

(b) A Board or its child care contractor shall pay [reimburse] a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCR minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not pay [reimburse] providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period;

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period; and

(3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this chapter.

(h) The Board or its child care contractor shall not pay [reimburse] a provider retroactively for new Board maximum payment [reimbursement] rates or new provider published rates.

(i) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining the enrollment authorized under subsection (f) of this section.

(j) A [Effective December 1, 2023, a] Board shall pay regulated child care providers prospectively every two weeks based on the enrollment authorization described in subsection (b) of this section.

§809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation.

(a) For a provider placed on probation corrective action (probationary status) by CCR, Boards shall ensure that:

(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCR's decision to place the provider on probationary status; and

(2) no new referrals are made to the provider while on probationary status.

(b) A parent receiving notification of a provider's probationary status with CCR pursuant to subsection (a) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71 of this chapter if the parent requests the transfer within 14 calendar days of receiving such notification.

(c) For a provider placed on probationary status by CCR, Boards shall ensure that the provider is not paid [reimbursed] at the Boards' enhanced payment [reimbursement] rates described in §809.20 while on probationary status.

(d) For a provider against whom CCR is taking adverse action, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCR intends to take adverse action against the provider;

(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCR intends to take adverse action against the provider; and

(3) no new referrals for Commission-funded child care are made to the provider while CCR is taking adverse action.

§809.96. *Contracted Slots Agreements.*

(a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:

(1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and

(2) meet the eligibility requirements as described in subsection (e) of this section.

(b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.

(c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.

(d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.

(e) To be eligible for a contract, a child care provider must be a Texas Rising Star Three-Star or Four-Star provider and meet one of the following priorities:

(1) Be located in:

(A) a child care desert; or

(B) an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.

(2) Have a recognized partnership with local school districts to provide pre-K services;

(3) Have a recognized partnership with EHS or HS;

(4) Increase the number of places reserved for infants and toddlers by high-quality child care providers; ~~or~~

(5) Increase the number of places reserved for children with disabilities; or

(6) [(5)] Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.

(f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements and may not exceed one month following the month of the vacancy.

(g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:

(1) that requested care in the ZIP code where the provider with the open reserved slot is located; and

(2) whose child is in the age group for which a slot is available.

(h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:

(1) financial stability of providers participating in the contract;

(2) availability of high-quality child care options available to participants in the Commission's subsidy program;

(3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;

(4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and

(5) additional information as requested by the Commission.

(i) A Board shall resubmit the report every 12 months from the due date of the Board's initial report to the Commission.

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

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SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §§809.130 - 809.134, 809.136

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the Texas Rising Star Program rules.

(b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code [§] §2308.3155, which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification and designation of an Entry Level child care provider.

(c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.

(d) The Texas Rising Star guidelines shall:

(1) describe measures for Texas Rising Star certification that contain, at a minimum, measures for child care providers regarding:

- (A) director and staff qualifications and training;
- (B) teacher-child interactions;
- (C) program administration; and
- (D) indoor/outdoor environments;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments;

(3) specify the scoring methodology and scoring thresholds for each certified star level; ~~and~~

(4) describe the high and medium-high CCR deficiencies points threshold pursuant to §809.131 and §809.132 of this chapter and; ~~[the process for designating providers at the Entry Level.]~~

(5) the process for designating providers at the Entry Level.

(e) The Texas Rising Star guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of this chapter, conducted pursuant to Texas Government Code [§] §2001.039 [§] and the Texas Rising Star guidelines review shall:

(A) consider input from stakeholders; and

(B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

§809.131. Requirements for the Texas Rising Star Program.

(a) A regulated child care provider is eligible for initial certification under the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCR;

(2) has at least 12 months of licensing history with CCR and does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4), and is not on:

(A) corrective action with a Board pursuant to Subchapter F of this chapter;

(B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or

(C) corrective or adverse action with CCR; ~~and~~

(3) meets the criteria for star-level certification in the Texas Rising Star guidelines pursuant to §809.130(d) of this subchapter; ~~and~~ [-]

(4) has at minimum, a center director account registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) is regulated by and in good standing with the United States Military.

(b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:

(1) is not on corrective or adverse action with CCR; and

(2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month ~~[12-month]~~ period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4) ~~[guidelines]~~.

(c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas Rising Star program during the time periods described in subsections (d) - (f) of this section.

(d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.

(e) An Entry Level provider will be reviewed for Texas Rising Star certification no later than the end of the 12th month of the 24-month period. Beginning on the 18th month, an Entry Level provider will be reviewed monthly for Texas Rising Star certification, and if it is determined that they will not be eligible by the end of their 24-month timeframe based on the 6-month licensing review time period (as described in subsection (a)(2) of this section), [If an Entry Level provider is not eligible for certification as Texas Rising Star by the end of the 18th month,] the provider shall not receive referrals for new families as an Entry Level provider, unless the provider is located

in a child care desert or serves an underserved population [§] and is approved by the Agency to accept new family referrals.

(f) The Agency may approve a waiver to extend the time limit under subsection (d) of this section if the provider is:

(1) located in a child care desert or serves an underserved population as determined by the Agency;

(2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or

(3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.

(g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

§809.132. *Impacts on Texas Rising Star Certification.*

(a) A Texas Rising Star-certified provider shall be placed on suspension status if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages);

(3) is placed on corrective or adverse action by CCR

(4) exceeds the probationary status points threshold as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4) [had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history];

(5) had more than four probationary impacts during its three-year certification period;

(6) had a consecutive third probationary impact;

(7) is cited for specified CCR minimum standards regarding weapons and ammunition; or

(8) is not meeting at least the Two-Star level due to non-compliance with Texas Rising Star guidelines at the most recent assessment of certification.

(b) Texas Rising Star-certified providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month [12-month] CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) reduction of one star level for each deficiency cited, so a Four-Star certified provider is reduced to a Three-Star provider, a Three-Star provider is reduced to a Two-Star provider, and a Two-Star provider is placed on suspension status; and/or [or]

(2) if CCR does not cite any additional specified star-level drop deficiencies during the 6-month probationary period the provider shall be reinstated at the former star level [a Two-Star provider is placed on suspension status].

(c) Texas Rising Star-certified providers [Texas Rising Star certified providers] with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month [12-month] CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) Texas Rising Star-certified [Texas Rising Star] providers on a six-month [Texas Rising Star] probationary period that

are cited by CCR within the probationary period for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;

(2) if CCR does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and

(3) if any additional specified probationary deficiencies are cited by CCR during the second six-month probationary period, the [Texas Rising Star] provider shall be placed on suspension status.

(d) Texas Rising Star-certified providers whose total points for high or medium-high deficiencies received [with 10 to 14 total high or medium-high weighted licensing deficiencies] during the most recent 6-month [12-month] CCR licensing history fall within the prescribed points threshold range as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4), shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:

(1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional high or medium-high weighted deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;

(2) if CCR does not cite any [no] additional high or medium-high weighted deficiencies [are cited by CCR] during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and

(3) if any additional [new] high or medium-high weighted deficiencies [not to exceed 14 total deficiencies--] are cited by CCR during the second six-month probationary period, the [a] provider shall be placed on suspension status.

~~[(e) Certified providers not on suspension status losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in subsections (b) - (d) of this section occur within the six-month reduction time frame.]~~

~~(e) [(f)] Certified providers in suspension status shall be eligible for a reassessment after six months following the suspension date, as long as no deficiencies described in subsections (b) - (d) of this section are cited during the previous six months.~~

~~(f) [(g)] Certified providers in suspension status shall achieve at least a Two-Star certification no later than 15 months following the suspension date. Failure to achieve at least a Two-Star certification within the 15-month period will result in the provider's ineligibility to provide child care services under this chapter.~~

~~(g) [(h)] Certified providers on suspension status:~~

~~(1) shall be eligible to provide child care services under this chapter as long as the provider meets at least the Entry Level criteria described in §809.131(b) of this chapter;~~

~~(2) shall not be eligible for the enhanced payment [reimbursement] rate and shall be paid [reimbursed] at the Board's Entry Level [reimbursement] rate; and~~

~~(3) [the provider] shall not be able to receive referrals from a new family during the last six months of the 15-month period, unless the provider is located in a child care desert or serves an underserved population [§] and is approved by the Agency to accept new family referrals.~~

(h) [(i)] Certified providers in suspension status that fail to achieve at least a Two-Star certification by the end the 15-month suspension period:

- (1) are not eligible to provide child care services under this chapter;
- (2) are not eligible for the Entry Level designation time frame described in §809.131(e) of this chapter;
- (3) are not eligible for the extension waiver described in §809.131(f) of this chapter; and
- (4) must subsequently meet at least a Two-Star certification eligibility and screening requirements to provide child care services under this subchapter.

§809.133. Application and Assessments for Texas Rising Star Certification.

(a) Texas Rising Star certification applicants must complete:

- (1) an orientation on the Texas Rising Star guidelines, including an overview of the:
 - (A) Texas Rising Star program application process;
 - (B) Texas Rising Star program measures; and
 - (C) Texas Rising Star program assessment process;
- (2) the creation of a continuous quality improvement plan; and
- (3) a Texas Rising Star program self-assessment tool.

(b) The Agency's designated Texas Rising Star assessment entity shall ensure that:

- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
- (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
- (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests certification under the Texas Rising Star program; and
- (4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.

(c) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star certification assessments are conducted as follows:

- (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and
- (2) Recertification of all certified Texas Rising Star providers every three years.

(d) The Agency's designated Texas Rising Star assessment entity shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:

- (1) at least one unannounced on-site visit; and
- (2) a review of the provider's licensing compliance as described in §809.132 of this chapter.

(e) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally

accredited child care facilities and child care facilities regulated by the United States Military.

(f) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.

(g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

~~[(h) Boards shall be responsible for the tasks assigned to the Texas Rising Star assessor entity in this subchapter, within their respective workforce areas, until the assessor entity is procured and designated by the Agency.]~~

§809.134. Minimum Qualifications for Texas Rising Star Staff.

(a) Boards and the Agency's designated Texas Rising Star assessment entity shall ~~[ensure that Texas Rising Star staff]:~~

(1) ~~conduct a background check on each Texas Rising Star staff member prior to hiring and again every five years [meets the background check requirement consistent with Chapter 745 of this title]; and~~

(2) ~~ensure that each Texas Rising Star staff~~ completes the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.

(b) Boards shall ensure that Texas Rising Star mentor staff meets the minimum requirements in subsections (c) - (f) of this section.

(c) Texas Rising Star mentor staff shall meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science, and two years of suitable experience in early childhood education as determined by the Board.

(d) The ~~Agency~~ ~~[Commission]~~ may grant a waiver of no more than two years to obtain the minimum education requirements in subsection (c) of this section if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.

(e) Texas Rising Star mentor staff shall meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.

(f) All mentors must attain mentor microcredentialing, as described in the Texas Rising Star Guidelines.

(g) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star assessor staff shall attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star Guidelines.

§809.136. *Roles and Responsibilities of Texas Rising Star Staff.*

Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

(1) A mentor is defined as a Board or Board contract staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

(2) An assessor is defined as a staff member or contractor of the Agency's designated Texas Rising Star assessment entity who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.

~~[(3) Dual-role staff is defined as an individual meeting the definitions of a mentor and assessor under this section.]~~

~~[(4) For dual-role staff, the Board and the Agency's designated Texas Rising Star assessment entity shall ensure that the individual providing Texas Rising Star mentoring services to a provider does not act as the assessor of that same provider when determining Texas Rising Star certification.]~~

(3) ~~[(5)]~~ Texas Rising Star staff members are required to complete annual professional development and continuing education

consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star-certified child care center director.

(4) ~~[(6)]~~ Pursuant to Texas Family Code [5] §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.

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

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