

# 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 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 40. CHRONIC WASTING DISEASE

##### 4 TAC §40.6

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 4 TAC §40.6 are not included in the print version of the Texas Register. The figures are available in the on-line version of the June 2, 2023, issue of the Texas Register.)*

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 40 titled "Chronic Wasting Disease." Specifically, amendments are proposed to §40.6 CWD Movement Restriction Zones.

##### BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission proposes amendments to §40.6 to clarify, correct, and update information regarding CWD management.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The purpose of the changes to §40.6 is to change the testing requirements for exotic CWD susceptible species to align with federal standards and match state standards for testing native CWD susceptible species in order to increase surveillance of CWD in the state. Additionally, grammatical and editorial changes are proposed for each section for consistency and improved readability.

##### SECTION-BY-SECTION DISCUSSION

Section 40.6 CWD Movement Restriction Zones

The proposed amendments to §40.6(a) clarify the definition of Exotic CWD Susceptible Species, specifically adding muntjac (*Muntiacus*) and specifying that mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from that definition and application of §40.6. Amendments to §40.6(c) and (d) change the mortality testing age from 16 months to 12 months and clarify that testing must occur within seven days. The amendments to these subsections also provide information on where test results and lab reports may be submitted. These amendments are intended to increase surveillance in designated containment and surveillance zones and align the requirements with federal standards for CWD testing.

This amendment also updates the geographic depiction in the attached graphic included in §40.6(b)(1)(C) to align with amendments to the rule which went into effect May 17, 2023. Additionally, geographic depictions have been added as attached graphics for each of each movement restriction zones. The attached graphics are designed to assist the readability of these rules and to aid the public in understanding the individual zones.

##### FISCAL NOTE

Ms. Myra Sines, Chief of Staff for the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their regular job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules, and the proposed rules do not have foreseeable implications relating to costs or revenues of state governments.

##### PUBLIC BENEFIT

Ms. Sines determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefits will be the protection of CWD susceptible species by increasing the surveillance of CWD susceptible species which will reduce the inadvertent spread of the disease from CWD susceptible species.

##### LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

##### MAJOR ENVIRONMENTAL RULE

The Commission determined that Texas Government Code §2001.0225 does not apply to the proposed rules because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure, and therefore, is not a major environmental rule.

#### TAKINGS ASSESSMENT

The Commission determined that the proposal does 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. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

#### ECONOMIC IMPACT STATEMENT

The Commission determined that the proposed amendments to §40.6 may impact animal agricultural industries, which may meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006. Specifically, the Commission determined that the proposed rules may affect herd owners of CWD susceptible species or exotic CWD susceptible species.

The Commission determined that the proposed amendments would not adversely affect herd owners of CWD susceptible species because the amendments do not substantially change the movement, testing, and reporting requirements. The removal of the limit to test only three animal mortalities a year and the lowering of mortality test age for CWD may increase the cost to some herd owners, but the tradeoff in disease surveillance outweighs the potential cost to the herd owner. As such, these amendments to the movement, testing, and reporting requirements will allow the Commission to better monitor CWD in Texas. As a result, the application of the rule will help prevent adverse economic impacts associated with CWD.

Although the Commission does not predict adverse economic impacts to those directly regulated by the Commission, the Commission considered the businesses that may be impacted and regulatory alternatives as part of its rule proposal process. Texas has an unknown number of exotic cervid species that are free-ranging and also maintained on high-fenced premises. Many of those premises are hunting ranches, which are not subject to the seasonal and regulatory hunting restrictions of TPWD. The clarity provided by these amendments should reduce or eliminate any confusion those directly regulated by the Commission may have in reading and interpreting the rules.

#### REGULATORY FLEXIBILITY ANALYSIS

The Commission considered several alternative methods for achieving the proposed rules' purpose while minimizing adverse economic impacts on small businesses, microbusinesses, and rural communities, as applicable, pursuant to Texas Government Code, Chapter 2006. The following sections analyze the substantive proposed changes that may have direct, adverse economic impacts on regulated parties in the order they are presented in Chapter 40.

The Commission considered an alternative method for achieving the proposed rules' purpose - by not changing the mortality testing requirements - but rejected the alternative because it would frustrate the Commission's ability to carry out Texas Agriculture Code §161.041 and eradicate or control any disease or agent of transmission, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission. This change also aligns the Commission's regulations

with other federal and state regulations over CWD susceptible species. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically CWD.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, for each year of the first five years the proposed rules would be in effect, the Commission determined the following:

The proposed rules will not create or eliminate a government program;

Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Commission;

The proposed rules will not require an increase or decrease in fees paid to the Commission;

The proposed rules will not create a new regulation;

The proposed rules will expand existing rules, but will not otherwise limit or repeal an existing regulation;

The proposed rules may increase the number of individuals subject to the regulation; and

The proposed rules will not adversely affect this state's economy.

#### COST TO REGULATED PERSONS

The proposed amendments to §40.6 may impose a cost on a regulated person by increasing the number of animals that may be required to be tested. The Commission determined these proposals are necessary to follow the legislative requirement that the Commission protect exotic livestock from certain diseases, specifically chronic wasting disease. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state. Pursuant to Section 161.041 of the Texas Agriculture Code, Section 2001.0045 of the Texas Government Code does not apply to rules adopted under Section 161.041; therefore, it is unnecessary to amend or repeal any other existing rule.

#### REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to [comments@tahc.texas.gov](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 40.6-CWD Rules" in the subject line.

#### STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects live-

stock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the is-

suance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl, if necessary, to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission,

by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

§40.6. CWD Movement Restriction Zones.

(a) Definitions. In addition to the definitions in Section 40.1, the following words and terms, when used in this section, shall have the following meanings:

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

(4) Exotic CWD Susceptible Species--A non-native cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by an official test conducted by an approved laboratory. This includes but is not limited to[ ~~which includes~~] North American elk or wapiti (*Cervus canadensis*), red deer (*Cervus elaphus*), sika [~~Sika~~] deer (*Cervus nippon*), moose (*Alces alces*) reindeer and caribou (*Rangifer tarandus*), muntjac (*Muntiacus*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and other native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(5) - (6) (No change.)

~~[(7) Native CWD Susceptible Species--All mule deer, white-tailed deer, and other native species under the jurisdiction of the TPWD are excluded from this definition and application of this section.]~~

~~[(8) Processing facility--A stationary facility designed and constructed to store or process CWD susceptible species.]~~

~~[(9) TPWD--The Texas Parks and Wildlife Department.]~~

~~[(10) Unnatural Movement--Any artificially induced movement of a live CWD susceptible species or the carcass of a CWD susceptible species.]~~

(b) Declaration of area restricted for CWD. CWD has been detected in susceptible species in different locations in Texas. This creates a high risk for CWD exposure or infection in CWD susceptible species in those geographic areas. In order to protect other areas of the state from the risk of exposure and spread of CWD, restricted areas, such as containment zones and surveillance zones, are created to protect against the spread of and exposure to CWD and have necessary surveillance to epidemiologically assess the risk. The high-risk areas are delineated as follows:

(1) Containment Zone Boundaries:

(A) Containment Zone 1. That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico;

thence southwest along U.S. 62-180 to Farm-to-Market Road (F.M.) 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to F.M. 1088; thence south along F.M. 1088 to the Rio Grande River; thence northwest along the Rio Grande River to the Texas-New Mexico border.

Figure: 4 TAC §40.6(b)(1)(A)

(B) Containment Zone 2. That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to the Oklahoma state line.

Figure: 4 TAC §40.6(b)(1)(B)

(C) Containment Zone 3. That portion of the state lying within Bandera, Medina and Uvalde counties and depicted in the following figure and more specifically described by the following latitude-longitude coordinate pairs:

-99.37149088670,	29.63846662930;	-99.37140891920,
29.63848553940,	-99.37060541260,	29.63866345050;
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-99.47352933700,	29.62732849060;	-99.47290467500,	-99.39999913720,	29.64574883930;	-99.39917517140,
29.62780441900;	-99.47227461410,	29.62827488590;	29.64566935940;	-99.39835215270,	29.64558271090;
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29.62919925120;	-99.47035266220,	29.62965305690;	29.64538794500;	-99.39588960600,	29.64527984560;
-99.46970163380,	29.63010121840;	-99.46904552450,	-99.39507119840,	29.64516461800;	-99.39425414710,
29.63054369050;	-99.46838439870,	29.63098043010;	29.64504227190;	-99.39343853200,	29.64491281920;
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29.63183653740;	-99.46637157960,	29.63225581960;	29.64463264940;	-99.39100112150,	29.64448195930;
-99.46569104900,	29.63266919830;	-99.46500583440,	-99.39019206490,	29.64432421950;	-99.38938484940,
29.63307663410;	-99.46431600450,	29.63347808370;	29.64415944400;	-99.38857955460,	29.64398765130;
-99.46362162670,	29.63387351040;	-99.46292277160,	-99.38777626140,	29.64380885720;	-99.38697504940,
29.63426287180;	-99.46221950800,	29.63464613200;	29.64362307930;	-99.38617599740,	29.64343033690;
-99.46151190420,	29.63502325060;	-99.46080003310,	-99.38537918500,	29.64323064860;	-99.38458469190,
29.63539419160;	-99.46008396320,	29.63575891740;	29.64302403470;	-99.38379259670,	29.64281051560;
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-99.45717913120,	29.63715495830;	-99.45644314560,	-99.38064976680,	29.64188781830;	-99.37987083690,
29.63748807890;	-99.45570339530,	29.63781477590;	29.64164010450;	-99.37909477380,	29.64138562170;
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29.63844877380;	-99.45346228500,	29.63875601010;	29.64085645570;	-99.37678455060,	29.64058182410;
-99.45270821060,	29.63905669830;	-99.45195074140,	-99.37602071930,	29.64030053010;	-99.37526013830,
29.63935080690;	-99.45118995310,	29.63963830830;	29.64001260120;	-99.37450288000,	29.63971806680;
-99.45042592060,	29.63991917290;	-99.44965872060,	-99.37374902190,	29.63941695450;	-99.37299863830,
29.64019337290;	-99.44888842900,	29.64046088140;	29.63910929630;	-99.37225180380,	29.63879512070;
-99.44811512160,	29.64072167080;	-99.44733887620,	-99.37150859160,	29.63847446060.	
29.64097571700;	-99.44655976880,	29.64122299300;	<u>Figure: 4 TAC §40.6(b)(1)(C)</u>		
-99.44577787910,	29.64146347570;	-99.44499328210,	<u>[Figure: 4 TAC §40.6(b)(1)(C)]</u>		
29.64169714000;	-99.44420605650,	29.64192396280;	(D) Containment Zone 4. That portion of the state ly-		
-99.44341628140,	29.64214392260;	-99.44262403450,	ing within the boundaries of a line beginning in Val Verde County at		
29.64235699620;	-99.44182939580,	29.64256316420;	the International Bridge and proceeding northeast along Spur 239 to		
-99.44103244220,	29.64276240410;	-99.44023325350,	U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377,		
29.64295469730;	-99.43943190980,	29.64314002420;	thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake		
-99.43862848980,	29.64331836610;	-99.43782307470,	Amistad (29.496183°, -100.913355°), thence west along the southern		
29.64348970630;	-99.43701574320,	29.64365402770;	shoreline of Lake Amistad to International Boundary at Lake Amistad		
-99.43620657630,	29.64381131280;	-99.43539565390,	dam, thence south along the Rio Grande River to the International		
29.64396154730;	-99.43458305710,	29.64410471440;	Bridge on Spur 239.		
-99.43376886570,	29.64424080260;	-99.43295316160,	<u>Figure: 4 TAC §40.6(b)(1)(D)</u>		
29.64436979610;	-99.43213602600,	29.64449168250;	(E) Containment Zone 5.		
-99.43131753850,	29.64460645040;	-99.43049778240,	-99.64149620530,		
29.64471408840;	-99.42967683740,	29.64481458510;	30.33874131980;		
-99.42885478660,	29.64490793090;	-99.42803171100,	-99.64368509530,		
29.64499411700;	-99.42720769240,	29.64507313300;	30.33901321630;		
-99.42638281280,	29.64514497390;	-99.42555715320,	-99.65015302980,		
29.64520963000;	-99.42473079760,	29.64526709620;	30.34033981470;		
-99.42390382590,	29.64531736670;	-99.42307632200,	-99.65628055710,		
29.64536043630;	-99.42224836800,	29.64539630000;	30.34272051420;		
-99.42142004480,	29.64542495540;	-99.42059143620,	-99.66183242590,		
29.64544639930;	-99.42019538000,	29.64545320040;	30.34606390020;		
-99.41984517350,	29.64549604270;	-99.41902310740,	-99.66659531760,		
29.64558932470;	-99.41820001720,	29.64567544610;	30.35024158170;		
-99.41737598480,	29.64575439900;	-99.41655109110,	-99.67038622830,		
29.64582617500;	-99.41572542010,	29.64589076790;	30.35354140340;		
-99.41489905180,	29.64594817000;	-99.41407207020,	-99.67153230830,		
29.64599837540;	-99.41324455610,	29.64604138070;	30.35466602360;		
			-99.67307523230,		
			30.35657758260;		

-99.67320399680, 30.35807240520; -99.67490548510, 30.35931074510; -99.67559374500, 30.36115489090; -99.676355731860, 30.36230808630; -99.67786171250, 30.36406546940; -99.67830297560, 30.36455843800; -99.67891470550, 30.36606391440; -99.67976457160, 30.36784958850; -99.68110363450, 30.36932507690; -99.68186455470, 30.37089670500; -99.68252472940, 30.37250197030; -99.68339519710, 30.37501266300; -99.68388655430, 30.37656326040; -99.68482271700, 30.38093217980; -99.68585440850, 30.38659995700; -99.68560139020, 30.39226123790; -99.68407316160, 30.39769844280; -99.68132825340, 30.40270256770; -99.67747200500, 30.40708122550; -99.67265253920, 30.41066604980; -99.66558968940, 30.41391929180; -99.66165850930, 30.41750367980; -99.65606031690, 30.42015631680; -99.64989941800, 30.42177518250; -99.64341274240, 30.42229851800; -99.63719834400, 30.42231930720; -99.62857258110, 30.42231989810; -99.62470336720, 30.42232542820; -99.62005802410, 30.42173125720; -99.61367144290, 30.42004379510; -99.60770683680, 30.41732794490; -99.60239356740, 30.41368815750;	30.35668212250; -99.67454916760, 30.35911757060; -99.67551615580, 30.36014136260; -99.67635111830, 30.36129141260; -99.67772804480, 30.36366423400; -99.67822368020, 30.36443424190; -99.67856992290, 30.36548187040; -99.67965466960, 30.36689341470; -99.68069940250, 30.36923041450; -99.68164128190, 30.37079983660; -99.68244431460, 30.37240318770; -99.68292311190, 30.37497458840; -99.68385461430, 30.37648115870; -99.68419881580, 30.37907927560; -99.68565229720, 30.38470058780; -99.68582890890, 30.39038839380; -99.68472164090, 30.39592410690; -99.68237283390, 30.40109494840; -99.67887258500, 30.40570213190; -99.67435530910, 30.40956851340; -99.66920922530, 30.41337003040; -99.66336153640, 30.41640629650; -99.65800006350, 30.41938271650; -99.65200129780, 30.42135511900; -99.64559591810, 30.42224764220; -99.63885349220, 30.42230575200; -99.62857293300, 30.42231983940; -99.62853525040, 30.42232597020; -99.62223849030, 30.42205280100; -99.61576530140, 30.42072459720; -99.60963355960, 30.41834182150; -99.60407907050, 30.41499611640; -99.59931538690,	-99.67419784160, 30.35859625790; -99.67503636190, 30.36002520870; -99.67626717380, 30.36128196820; -99.67702442120, 30.36343779160; -99.67809406440, 30.36429367690; -99.67837167020, 30.36489829520; -99.67926295430, 30.36671044570; -99.68033394380, 30.36848209490; -99.68115288840, 30.37031201670; -99.68190727670, 30.37219104650; -99.68256168900, 30.37353270560; -99.68340763060, 30.37638495130; -99.68392076900, 30.37725784890; -99.68530790520, 30.38280862860; -99.68591336530, 30.38849860270; -99.68523177540, 30.39410911390; -99.68328910920, 30.39942452120; -99.68015983740, 30.40424049180; -99.67596409470, 30.40837186230; -99.67086307820, 30.41155292840; -99.66497058320, 30.41520979110; -99.65986879620, 30.41849723880; -99.65405786830, 30.42081472460; -99.64776123680, 30.42207311640; -99.64149516520, 30.42230298220; -99.62890505410, 30.42231983860; -99.62853562830, 30.42231989880; -99.62442926150, 30.42225114130; -99.61789720740, 30.42128788980; -99.61162460530, 30.41924840030; -99.60585269270, 30.41621111470; -99.60080340260, 30.41229284120;	-99.59793589010, 30.40926440230; -99.59450509380, 30.40422677810; -99.59223291930, 30.39876895810; -99.59120651520, 30.39313280380; -99.59118380940, 30.38560486270; -99.59124342770, 30.37656217650; -99.59193043630, 30.37095247640; -99.59387775000, 30.36563872200; -99.59701035040, 30.36082505220; -99.60120773080, 30.35669636630; -99.60540738080, 30.35491852200; -99.60555613110, 30.35342446360; -99.61037554920, 30.34984218270; -99.61385007130, 30.34760629390; -99.61808901110, 30.34551720800; -99.62473042750, 30.34165492410; -99.63072498160, 30.33968364210; -99.63712512170, 30.33879165670;	30.41081614710; -99.59552558690, 30.40596264510; -99.59285523420, 30.40062221490; -99.59140679900, 30.39500014900; -99.59115375540, 30.38774221940; -99.59124320070, 30.37846075860; -99.59155907020, 30.37279998160; -99.59309227100, 30.36736416610; -99.59584099880, 30.36236215260; -99.59969947650, 30.35798608380; -99.59305297700, 30.35493733740; -99.60546294390, 30.35480272720; -99.60867299970, 30.35093887330; -99.61331695410, 30.34880216210; -99.61734141820, 30.34609451280; -99.62361034360, 30.34253992590; -99.62866995560, 30.34022372110; -99.63496162850, 30.33896607510;	-99.59667081880, 30.40764425470; -99.59361370580, 30.40244408940; -99.59174942070, 30.39689225700; -99.59114919160, 30.39242219590; -99.59119753520, 30.37849282500; -99.59132973720, 30.37467255410; -99.59244223560, 30.36913794860; -99.59479530410, 30.36396900160; -99.59829834880, 30.35936427870; -99.60281665440, 30.35550064420; -99.60543808850, 30.35489405770; -99.60706423050, 30.35213467300; -99.61216459030, 30.34922963580; -99.61555249780, 30.34650953120; -99.61915992100, 30.34311791310; -99.62666891670, 30.34088175330; -99.63282520140, 30.33926382870; -99.63930642450,
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Figure: 4 TAC §40.6(b)(1)(E)

(F) Containment Zone 6. That portion of the state within the boundaries of a line beginning in Lubbock County where County Road (C.R.) 3600 intersects with E. Division Street in Slaton; thence west along E. Division Street to S. New Mexico Street; thence northwest along S. New Mexico Street to Railroad Avenue; thence northwest along Railroad Avenue to Industrial Drive; thence northwest along Industrial Drive to U.S. Highway (U.S.) 84; thence northwest along U.S. 84 to State Highway (S.H.) Spur 331; thence northwest along S.H. 331 to S.H. Loop 289; thence north along S.H. Loop 289 to Farm to Market (F.M.) 40; thence east along F.M. 40 to C.R. 3650; thence south along C.R. 3650 to C.R. 6840; thence east along C.R. 6840 to C.R. 3700; thence south along C.R. 3700 to C.R. 3600; thence south along C.R. 3600 to E. Division Street.

Figure: 4 TAC §40.6(b)(1)(F)

(2) Surveillance Zone Boundaries:

(A) Surveillance Zone 1. That portion of the state within the boundaries of a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson

County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande River to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

Figure: 4 TAC §40.6(b)(2)(A)

(B) Surveillance Zone 2. That portion of the state within the boundaries of a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northwest along S.H. 136 to N. Lakeside Dr.; thence north along N. Lakeside Dr. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to Denton St.; thence north along Denton St. to E. Cherry; thence west along E. Cherry to N. Eastern St.; thence south along N. Eastern St. to E. Willow Creek Dr.; thence west along E. Willow Creek Dr. to U.S. 87; thence north along U.S. 87 to the City of Dumas; thence along the city limits of Dumas to U.S. 287 in Moore County; thence north along U.S. 287 to the Oklahoma state line.

Figure: 4 TAC §40.6(b)(2)(B)

(C) Surveillance Zone 3. That portion of the state not within the CZ described in paragraph (b)(1)(C) of this subsection lying within a line beginning the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 1574 in Uvalde County; thence south along F.M. 1574 to F.M. 1023 (Garner Field Road); thence west along F.M. 1023 to County Road 373; thence south along County Road 373 to County Road 374; thence west along County Road 374 to F.M. 140; thence northwest along F.M. 140 to F.M. 117; thence north along F.M. 117 to U.S. Highway 83; thence southwest along U.S. Highway 83 to F.M. 1435; thence north along F.M. 1435 to U.S. Highway 90; thence west along U.S. Highway 90 to F.M. 2369; thence northwest along F.M. 2369 to F.M. 1403; thence north along F.M. 1403 to State Highway 55; thence northwest along S.H. 55 to Indian Creek Road; thence northeast along Indian Creek Road to Lower Frio Ranch Road; thence southeast along Lower Frio Ranch Road to Deep Creek; thence southeast along Deep Creek to the U.S. Highway 83; thence north along U.S. Highway 83 to State Highway 127 in Concan; thence southeast along State Highway 127 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; Thence south along State Highway 173 to U.S. Highway 90; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M. 1250 to U.S. Highway 90.

Figure: 4 TAC §40.6(b)(2)(C)

(D) Surveillance Zone 4. That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns

northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

Figure: 4 TAC §40.6(b)(2)(D)

(E) Surveillance Zone 5. That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along on I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

Figure: 4 TAC §40.6(b)(2)(E)

(F) Surveillance Zone 6. That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along FM 41 to F.M. 179; thence north along F.M. 179 to F.M. 2641; thence east along F.M. 2641 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County.

Figure: 4 TAC §40.6(b)(2)(F)

(G) Surveillance Zone 7. That portion of the state lying within the boundaries of a line beginning at S.H. 205; thence southeast along S.H. 205 to U.S. 80; thence east along U.S. 80 to North 4th Street in Wills Point; thence north along North 4th Street to F.M. 751, then north along F.M. 751 to Lake Tawakoni; thence west and north along the Lake Tawakoni shoreline to the confluence of Caddo Creek; thence northwest along Caddo Creek to West Caddo Creek; thence northwest along West Caddo Creek to I.H. 30; thence southwest along I.H. 30 to F.M. 548 to S.H. 205.

Figure: 4 TAC §40.6(b)(2)(G)

(H) Surveillance Zone 8.

Figure: 4 TAC §40.6(b)(2)(H)

(i) That portion of the state within the boundaries of a line beginning at the intersection of Farm to Market (F.M.) Road 624 and U.S. Highway (U.S.) 59 in Live Oak County; thence southwest along U.S. 59 to the intersection of County Road (C.R.) 101 in Duval County; thence southeast along C.R. 101 to North Julian Street in San Diego; thence south along Julian Street to State Highway (S.H.) 44; thence east on S.H. 44 to C.R. 145 in Jim Wells County; thence north along C.R. 145 to C.R. 172; thence east on C.R. 172 to C.R. 170; thence south on C.R. 170 to C.R. 120; thence east on C.R. 120; to U.S. 281; thence north on U.S. 281 to F.M. 624; thence west along F.M. 624 to U.S. 59.

(ii) For the purposes of this subchapter, the zone described in clause (i) of this subparagraph includes the following:

(I) the area within the city limits of Freer;

(II) the area within the city limits of Alice;

(III) the roadway and right-of-way of:

(-a-) U.S. 59 between the city of Freer and the intersection with C.R. 101;

(-b-) U.S. 44 between the city of Freer and the city of Alice; and

(-c-) U.S. 281 between the city of Alice and the intersection with F.M. 624.

(c) Containment Zone (CZ) Requirements:

(1) Movement. No exotic CWD susceptible species may be transported outside the CZ unless from a certified herd [a herd with a Certified Status] as established through §40.3 [§40.3(e)(6)] (relating to CWD Herd Certification Program [for Cervidae]) of this chapter.

(2) (No change.)

(3) Testing. All exotic CWD susceptible species, 12 [16] months of age or older, that are hunter harvested shall be tested for CWD within seven days using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. No part of a carcass of an exotic [a] CWD susceptible species, either killed or found dead may be removed from the CZ unless postmortem tissue samples have been [a testable CWD sample from the carcass is] collected and tested using an official CWD test and it is transported in accordance with subsection (e) of this section. The results and laboratory report shall be provided to the commission [or the TPWD] within 14 [30] days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to [CWD\\_reports@tahc.texas.gov](mailto:CWD_reports@tahc.texas.gov).

(4) - (7) (No change.)

(d) Surveillance Zone (SZ) Requirements:

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

(3) Testing. All exotic CWD susceptible species, 12 [16] months of age or older, that are hunter harvested shall be tested for CWD within seven days using an official CWD test. Unless the whole head is submitted for testing, postmortem tissue samples must be collected and prepared by a state or federal animal health official, an accredited veterinarian, or a certified CWD postmortem sample collector. No part of a carcass of an exotic [a] CWD susceptible species, either killed or found dead may be removed from the SZ unless postmortem tissue samples have been [a testable CWD sample from the carcass is] collected and tested using an official CWD test and it is transported in accordance with subsection (e) of this section. The results and laboratory report shall be provided to the commission [or the TPWD] within 14 [30] days of receiving the test results by mail to Texas Animal Health Commission, CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; by fax to (512) 719-0729; or by email to [CWD\\_reports@tahc.texas.gov](mailto:CWD_reports@tahc.texas.gov).

(4) - (7) (No change.)

(e) (No change.)

(f) The executive director [Executive Director] may authorize movement. If movement is necessary or desirable to promote the ob-

jectives of this chapter or to minimize the economic impact of the restricted CWD susceptible species without endangering those objectives or the health and safety of other CWD susceptible species within the state, the executive director [Executive Director] may authorize movement in a manner that creates minimal risk to the other CWD susceptible species in the state.

(g) (No change.)

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301846

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 719-0718



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.10, Public Comment Procedures. The purpose of the repeal is to eliminate an outdated rule while proposing a new updated rule under separate action.

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

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

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

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

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

6. The repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

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

8. The repeal will not negatively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

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

PUBLIC COMMENT. The public comment period is open from June 2, 2023 to July 3, 2023. Comment may be submitted to [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). Comment received after 5:00 Central time on July 3, 2023, will not be considered.

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

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

§1.10. *Public Comment Procedures.*

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301847

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 2, 2023

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



## 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.10, Public Comment Procedures. The purpose of the rule is to govern how public comment can be made at Governing Board meetings.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the security of personal information.

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

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

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

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

6. The rule will not limit, expand, or repeal an existing regulation, but merely revises a rule.

7. The new rule does increase or decrease the number of individuals to whom this rule applies.

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

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

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

2. This rule provides specific detail on how public comment can be provided at meetings of the Department's governing board. Other than in the case of a small or micro-business that participates at a board meeting, no small or micro-businesses are subject to the rule. If a small or micro-business does participate at a board meeting, merely direct how their comment can be made.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, there

will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule is applicable to all commenters at a meeting, there are no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be improved clarity on the process for making comment at a board meeting. There is no economic cost to any individuals required to comply with the new rule.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

**PUBLIC COMMENT.** The public comment period is open from June 2, 2023 to July 3, 2023. Comment may be submitted to [bboston@tdhca.state.tx.us](mailto:bboston@tdhca.state.tx.us). Comment received after 5:00 Central time on July 3, 2023, will not be considered.

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

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

*§1.10. Public Comment Procedures.*

(a) **Purpose.** The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) **Procedures for taking public comment.**

(1) At each meeting open to the public the Governing Board (Board) shall provide opportunity for members of the public to make:

(A) General public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place

reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book posted on the Department's website, or additional printed materials only as provided for in paragraph (6) of this subsection.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals present at the meeting, who wish to register their position for or against a posted agenda item, but do not wish to speak, may do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form, must state the commenter's name, whom they represent, the action item to which their comment relates, their position, and must be signed by the commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair's discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(D) Persons seeking allowance of written materials under subparagraph (C) of this paragraph should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this title (relating to Qualified Allocation Plan (QAP) and Multifamily Direct Loan Rule, respectively), such materials provided under either subparagraphs (A) or (C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.

(c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through an interpreter will be given at least twice the amount of time as a member of the public who does not require the assistance of an interpreter in order to ensure that non-English speakers receive the same opportunity to address the Board.

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301848

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 2, 2023

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



## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§231.77, 231.79, 231.173, 231.271, 231.301, 231.381, 231.421, 231.423, 231.463, 231.483, and 231.563; new §231.221 and §231.385; and the repeal of §231.175, concerning requirements for public school personnel assignments. The proposed revisions would incorporate courses approved by the State Board of Education (SBOE), would add certificate areas to the list of credentials appropriate for placement into an assignment, and would incorporate technical edits where needed to improve readability and align citations.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments.

These subchapters offer guidance to school districts and educators by providing the list of courses by grade level and subject area and identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments.

Proposed revisions to 19 TAC Chapter 231, Subchapter C and Subchapter E, are described below.

#### *Subchapter C. Grades 6-8 Assignments*

##### *Titles, Assignments, and Technical Changes*

#### §231.77. Technology Applications, Grades 6-8

The proposed amendment would add Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach Technology Applications, Grades 6-8.

#### §231.79. Career Development, Grades 6-8

The proposed amendment would add the new SBOE-approved course, Career and College Exploration, Grades 6-8, and delete the two courses repealed by the SBOE: College and Career Readiness, Grades 6-8, and Investigating Careers, Grades 6-8. The proposed amendment would also add Mathematics/Physi-



cal Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate to teach middle school courses for Career Development, Grades 6-8.

#### *Subchapter E. Grades 9-12 Assignments*

##### *Titles, Assignments, and Technical Changes*

###### *Division 3. Social Studies, Grades 9-12 Assignments.*

The proposed amendment to §231.173, Economics with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12, would update the title to "Economics and Personal Financial Literacy, Grades 9-12" to incorporate additional course listings from §231.175, Personal Financial Literacy, Grades 9-12, and add the SBOE-approved course, Economics and Personal Financial Literacy, into rule. The list of certificates approved as appropriate to teach these courses and already presented in rule would remain unchanged.

The proposal would repeal §231.175, Personal Financial Literacy, Grades 9-12, as the information from the section has been incorporated in the proposed changes to §231.173, referenced above.

###### *Division 5. Science, Grades 9-12 Assignments.*

Proposed new §231.221, Specialized Topics in Science, Grades 9-12, would add this new SBOE-approved course into rule and identify the list of certificates appropriate to teach the course.

###### *Division 9. Career Development, Grades 9-12 Assignments.*

The proposed amendment to §231.271, Career Development, Grades 9-12, subsection (a), would add Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 to the list of certificates appropriate for the specified assignments.

###### *Division 11. Architecture and Construction, Grades 9-12 Assignments.*

The proposed amendment to §231.301, Principles of Architecture; Principles of Construction, Grades 9-12, would add "any vocational agriculture certificate" to the list of certificates appropriate for the specified assignments.

###### *Division 14. Education and Training, Grades 9-12 Assignments.*

The proposed amendment to §231.381, Education and Training, Grades 9-12, would add the new SBOE-approved course, Communication and Technology in Education, Grades 9-12, into rule. All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new course being added.

Proposed new §231.385, Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12, would add three new SBOE-approved courses, Child Development, Grades 9-12; Child Guidance, Grades 9-12; and Child Development Associates Foundation, Grades 9-12, into rule and specify the certificates appropriate to serve in these assignments.

###### *Division 17. Health Science, Grades 9-12 Assignments.*

The proposed amendment to §231.421, Health Science, Grades 9-12, would update subsection (a) to add the new SBOE-approved course, Pharmacy I, Grades 9-12, and the Medical Assistant, Grades 9-12, course already established in rule. The proposal would delete the Medical Assistant, Grades 9-12, course

reference in subsection (b) and would add the new SBOE-approved course, Practicum in Nursing, Grades 9-12, to subsection (c). All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new courses being added.

The proposed amendment to §231.423, Anatomy and Physiology, Medical Microbiology, Pathophysiology, and Respiratory Therapy I, Grades 9-12, would update the title to include the Respiratory II course. All remaining information would remain the same as the certificates listed in rule are appropriate to teach the new course being added.

###### *Division 19. Human Services, Grades 9-12 Assignments.*

The proposed amendment to §231.463, Lifetime Nutrition and Wellness, Grades 9-12, would add Health: Early Childhood-Grade 12 to the list of certificates appropriate for the specified assignment. All remaining information would be renumbered to reflect this update.

###### *Division 20. Information Technology, Grades 9-12 Assignments.*

The proposed amendment to §231.483, Digital Media, Grades 9-12, would add "any marketing certificate" to the list of certificates appropriate for the specified assignments. All remaining information would be renumbered to reflect this update.

###### *Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.*

The proposed amendment to §231.563, Principles of Biosciences, Grades 9-12, would add Life Science: Grades 7-12 and Life Science: Grades 8-12, Legacy Master Science Teacher (Grades 8-12), Science: Grades 7-12 and Science: Grades 8-12, Secondary Biology (Grades 6-12), Secondary Science (Grades 6-12), and Secondary Science, Composite (Grades 6-12), to the list of certificates appropriate to teach this course.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §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 TGC, §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 TGC, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: The Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations and repeal a regulation. The proposal would add proposed new 19 TAC §231.385, Child Development, Child Guidance, or Child Development Associates

Foundation, Grades 9-12, and proposed new 19 TAC §231.221, Specialized Topics in Science, Grades 9-12, to add newly approved courses. The proposal would repeal §231.175, Personal Financial Literacy, Grades 9-12, which would be consolidated as part of 19 TAC §231.173.

The proposal would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand 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:** Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be clear guidance for districts on appropriate credentials for placement of individuals into classroom, administrative, and support personnel assignments. The TEA staff has determined there is no anticipated cost to persons who are required to comply with the proposal.

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

**ENVIRONMENTAL IMPACT STATEMENT:** The proposal does not require an environmental impact analysis because the amendments are not major environmental rules under TGC, §2001.0225.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff 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 June 2, 2023, and ends July 3, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the July 21, 2023, meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 2, 2023.

## SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

### 19 TAC §231.77, §231.79

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or

permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

#### §231.77. *Technology Applications, Grades 6-8.*

An assignment in a departmentalized classroom for Technology Applications, Grades 6-8, is allowed with one of the following certificates.

- (1) Elementary teacher certificate plus verification of competency to teach computer literacy.
- (2) Grades 6-12 or Grades 6-8--Computer Information Systems.
- (3) Information Processing Technologies Endorsement (Level I or II).
- (4) Junior High School or High School--Computer Information Systems.
- (5) Secondary Computer Information Systems (Grades 6-12).
- (6) Secondary teacher certificate plus verification of competency to teach computer literacy.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12 (Grade 8 only).
- (9) Mathematics/Physical Science/Engineering: Grades 6-12.
- (10) Mathematics/Physical Science/Engineering: Grades 8-12.

#### §231.79. *Career Development, Grades 6-8.*

An assignment in a departmentalized classroom for Career and College Exploration, Grades 6-8, [Career Development, College and Career Readiness, or Investigating Careers, Grades 6-8,] for a holder of a valid secondary or all-level certificate is allowed with a Technology Applications: Early Childhood-Grade 12 certificate, a Technology Applications: Grades 8-12 certificate, a Mathematics/Physical Science/Engineering: Grades 6-12 certificate, a Mathematics/Physical Science/Engineering: Grades 8-12 certificate, and any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301850

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## SUBCHAPTER E. GRADES 9-12 [9 - 12]

### ASSIGNMENTS

#### DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

##### 19 TAC §231.173

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.173. *Economics and Personal Financial Literacy, Grades 9-12 [with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12].*

An assignment for Economics with Emphasis on the Free Enterprise System and Its Benefits, [or] Economics Advanced Studies, Personal Financial Literacy, or Personal Financial Literacy and Economics, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business certificate.
- (2) Grades 6-12 or Grades 9-12--Economics.
- (3) Grades 6-12 or Grades 9-12--Social Studies.
- (4) Grades 6-12 or Grades 9-12--Social Studies, Composite.
- (5) Junior High School (Grades 9-10 only) or High School--Economics.
- (6) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (7) Secondary Economics (Grades 6-12).

(8) Secondary Social Studies (Grades 6-12).

(9) Secondary Social Studies, Composite (Grades 6-12).

(10) Social Studies: Grades 7-12.

(11) Social Studies: Grades 8-12.

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301851

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



##### 19 TAC §231.175

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.175. *Personal Financial Literacy, Grades 9-12.*

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301852

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



#### DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

## 19 TAC §231.221

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

### §231.221. Specialized Topics in Science, Grades 9-12.

An assignment for Specialized Topics in Science, Grades 9-12, is allowed with one of the following certificates.

(1) Any science certificate valid for Grades 6-12, Grades 7-12, or Grades 8-12.

(2) Any secondary science teaching field.

(3) Legacy Master Science Teacher (Grades 8-12).

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301853

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.271

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators;

TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

### *§231.271. Career Development, Grades 9-12.*

(a) Subject to the requirements in subsection (e) of this section, an assignment for Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(2) Any special education certificate so long as, beginning with the 2020-2021 school year, the special education-certified teacher assigned to teach this course shall complete Texas Education Agency-approved training found at [tea.texas.gov/cte](http://tea.texas.gov/cte) prior to teaching this course.

(3) Technology Applications: Early Childhood-Grade 12.

(4) Technology Applications: Grades 8-12.

(5) Mathematics/Physical Science/Engineering: Grades 6-12.

(6) Mathematics/Physical Science/Engineering: Grades 8-12.

(b) An assignment for Project-Based Research, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.

(2) Technology Applications: Early Childhood-Grade 12.

(3) Technology Applications: Grades 8-12.

(c) An assignment for Applied Mathematics for Technical Professionals, Grades 9-12, is allowed with one of the following certificates.

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title. This assignment requires a bachelor's degree.

(2) Grades 6-12 or Grades 9-12 Mathematics.

(3) Legacy Master Mathematics Teacher (Grades 8-12).

(4) Mathematics: Grades 7-12.

(5) Mathematics: Grades 8-12.

(6) Mathematics/Physical Science/Engineering: Grades 6-12.

- (7) Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) Physics/Mathematics: Grades 7-12.
- (9) Physics/Mathematics: Grades 8-12.
- (10) Secondary Mathematics (Grades 6-12).
- (11) Computer Science: Grades 8-12.
- (12) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (13) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
- (14) Secondary Computer Information Systems (Grades 6-12).
- (15) Technology Applications: Early Childhood-Grade 12.
- (16) Technology Applications: Grades 8-12.

(d) All teachers assigned to Applied Mathematics for Technical Professionals shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

(e) The school district is responsible for ensuring that each teacher assigned to Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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

Filed with the Office of the Secretary of State on May 22, 2023.  
 TRD-202301854  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: July 2, 2023  
 For further information, please call: (512) 475-1497



## DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.301

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B;

TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.301. *Principles of Architecture; Principles of Construction, Grades 9-12.*

An assignment for Principles of Architecture or Principles of Construction, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) [(3)] Any home economics or homemaking certificate.
- (5) [(4)] Family and Consumer Sciences, Composite: Grades 6-12.
- (6) [(5)] Mathematics/Physical Science/Engineering: Grades 6-12.
- (7) [(6)] Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) [(7)] Secondary Industrial Arts (Grades 6-12).
- (9) [(8)] Secondary Industrial Technology (Grades 6-12).
- (10) [(9)] Technology Education: Grades 6-12.
- (11) [(10)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) [(11)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) [(12)] Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.
- (14) [(13)] Vocational Trades and Industry. This assignment requires appropriate work approval.

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

Filed with the Office of the Secretary of State on May 22, 2023.  
 TRD-202301855  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: July 2, 2023  
 For further information, please call: (512) 475-1497



## DIVISION 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.381, §231.385

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

*§231.381. Education and Training, Grades 9-12.*

(a) An assignment for Instructional Practices, [or] Principles of Education and Training, or Communication and Technology in Education, Grades 9-12, is allowed with any valid classroom teacher or administrator certificate.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Education and Training, Extended Practicum in Education and Training, Practicum in Early Learning, or Extended Practicum in Early Learning, Grades 9-12, is allowed with any valid classroom teacher or administrator certificate.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Education and Training, Extended Practicum in Education and Training, Practicum in Early Learning, or Extended Practicum in Early Learning, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

*§231.385. Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12.*

An assignment for Child Development, Child Guidance, or Child Development Associates Foundation, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Family and Consumer Sciences, Composite: Grades 6-12.
- (3) Health Science: Grades 6-12.
- (4) Health Science Technology.
- (5) Health Science Technology Education: Grades 8-12.
- (6) Human Development and Family Studies: Grades 8-12.
- (7) Vocational Health Occupations.
- (8) Vocational Health Science Technology.

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 22, 2023.

TRD-202301856

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## DIVISION 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.421, §231.423

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

*§231.421. Health Science, Grades 9-12.*

(a) An assignment for Health Science Theory, Health Science Clinical, Pharmacology, Pharmacy I, Pharmacy II, Principles of Health Science, [or] World Health Research, or Medical Assistant, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(b) An assignment for Medical Terminology [or Medical Assistant], Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12.

- (5) Health Science Technology Education: Grades 8-12.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Vocational Health Occupations.
- (12) Vocational Health Science Technology.

(c) Subject to the requirements in subsection (d) of this section, an assignment for Practicum in Health Science, ~~or~~ Extended Practicum in Health Science, and Practicum in Nursing, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(d) The school district is responsible for ensuring that each teacher assigned to Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

*§231.423. Anatomy and Physiology, Medical Microbiology, Pathophysiology, ~~and~~ Respiratory Therapy I, and Respiratory Therapy II, Grades 9-12.*

(a) An assignment for Anatomy and Physiology, Medical Microbiology, Pathophysiology, ~~or~~ Respiratory Therapy I, or Respiratory Therapy II, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (5) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (12) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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 22, 2023.

TRD-202301857

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.463

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

*§231.463. Lifetime Nutrition and Wellness, Grades 9-12.*

An assignment for Lifetime Nutrition and Wellness, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Family and Consumer Sciences, Composite: Grades 6-12.
- (3) Health: Early Childhood-Grade 12.
- (4) [~~3~~] Health Science: Grades 6-12.
- (5) [~~4~~] Health Science Technology Education: Grades 8-12.
- (6) [~~5~~] Hospitality, Nutrition, and Food Sciences: Grades 8-12.
- (7) [~~6~~] Human Development and Family Studies: Grades 8-12.
- (8) [~~7~~] Vocational Health Occupations.
- (9) [~~8~~] Vocational Health Science Technology.

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 22, 2023.

TRD-202301858

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.483

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.483. *Digital Media, Grades 9-12.*

An assignment for Digital Media, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
  - (2) Any marketing certificate.
  - (3) [(2)] Business and Finance: Grades 6-12.
  - (4) [(3)] Business Education: Grades 6-12.
  - (5) [(4)] Secondary Industrial Arts (Grades 6-12).
  - (6) [(5)] Secondary Industrial Technology (Grades 6-12).
  - (7) [(6)] Technology Education: Grades 6-12.
  - (8) [(7)] Technology Applications: Early Childhood-Grade 12.
  - (9) [(8)] Technology Applications: Grades 8-12.
  - (10) [(9)] Trade and Industrial Education: Grades 6-12.
- This assignment requires appropriate work approval.

(11) [(10)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(12) [(11)] Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.

(13) [(12)] Vocational Trades and Industry. This assignment requires appropriate work approval.

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301859

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.563

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §§21.003(a), 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.563. *Principles of Biosciences, Grades 9-12.*

An assignment for Principles of Biosciences, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Health Science: Grades 6-12.
- (5) Health Science Technology Education: Grades 8-12.



- (6) Mathematics/Physical Science/Engineering: Grades 6-12.
- (7) Mathematics/Physical Science/Engineering: Grades 8-12.
- (8) Secondary Industrial Technology (Grades 6-12).
- (9) Secondary Industrial Arts (Grades 6-12).
- (10) Technology Education: Grades 6-12.
- (11) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (12) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (13) Trade and Industrial Workforce Training: Grades 6-12. This assignment requires appropriate work approval.
- (14) Vocational Health Occupations.
- (15) Vocational Health Science Technology.
- (16) Life Science: Grades 7-12.
- (17) Life Science: Grades 8-12.
- (18) Legacy Master Science Teacher (Grades 8-12).
- (19) Science: Grades 7-12.
- (20) Science: Grades 8-12.
- (21) Secondary Biology (Grades 6-12).
- (22) Secondary Science (Grades 6-12).
- (23) Secondary Science, Composite (Grades 6-12).

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

Filed with the Office of the Secretary of State on May 22, 2023.

TRD-202301860

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: July 2, 2023

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



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §§273.7, 273.8, 273.12, 273.14, 273.15

The Texas Optometry Board proposes amendments to 22 TAC Chapter 273, General Rules, §§273.7, 273.8, 273.12, 273.14 and 273.15.

The rules in the Chapter 273 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. At the January 19, 2023, committee meeting, members voted to move forward with changes to update and modernize the process and to refer the proposal to the Rules Committee. At the April 27, 2023, Rules Committee meeting, the members

concurred with the recommendations of the Administration and Licensing Committee and proposed the following amendments to the licensing and renewal process.

During the April 28, 2023, meeting the Board determined that there continues to be a need for the rules in Chapter 273. The Board has also determined that changes to certain rules as currently in effect are necessary. The specific rules being amended include: §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care (to include splitting one rule into two separate rules for clarification purposes), §273.8 - Renewal of License, §273.12 - Profile Information, and §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse. As noted above, the Board proposes to adopt a new rule titled §273.15 - Retired License for Volunteer Charity Care which previously was part of §273.7.

The amendments outlined in this proposal include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director."

In §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care, the Board proposes to split the rule into two separate rules - one related to Inactive Licenses and one related to Retired License for Volunteer Charity Care. Splitting the rule provides ease of understanding the differences between inactive and retired licenses. In the new §273.7 - Inactive Licenses, the rule eliminates the ability to place a license on inactive status at any time and instead allows it only at renewal.

In the new §273.15 - Retired License for Volunteer Charity Care, the rule moves language previously outlined in §273.7 and also ensures only therapeutic optometrists can update an expired license to a retired license.

In §273.8 - Renewal of License, the Board proposes to update the process to reflect the full transition to the biennial renewal system, clarifies the process for expired licenses to be reinstated under certain circumstances. It ensures the Board's consideration of convictions are in compliance with Chapter 53 of the Occupations Code, and makes other clarifying corrections to ensure the renewal process is both efficient and effective for licensees and Board staff.

In §273.12 - Profile Information, the Board proposes to remove the requirement that licensees provide certain information to the Board upon renewal as the Board no longer collects and disseminates this information. It adds the requirement that a licensee provide a personal email address at renewal.

In §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse, the Board proposes to update the definition of "Armed Forces of the United States" to update statutory language, to update the application requirements to ensure military applicants provide the same information as a regular applicant, and changes the initial expiration date of a military license to be the same as a regular applicant. Finally, with the changes to the jurisprudence exam occurring in Chapter 271 - Examination, the Board is requiring military applicants to take the jurisprudence exam prior to licensure instead of prior to the first renewal as this changes no longer create a barrier to expedited licensure.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rules are in effect, there will not be fiscal implications for state and local governments as a result of amending these existing rules.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendments are in effect, the public benefit is a more effective and efficient licensing and renewal system for both licensees and Board staff.

Legal counsel for the Board has reviewed the amended rules and has found them to be within the Board's authority to propose.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendments. Since the agency has determined that the amendments to the rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rules will be in effect, it is anticipated that the amendments will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rules may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §273.7 - Inactive Licenses and Retired License for Volunteer Charity Care (to include splitting into two rules), §273.8 - Renewal of License, §273.12 - Profile Information, and §273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse and the creation of new rule §273.15 - Retired License for Volunteer Charity Care are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code Chapter 351, Subchapter F - License Requirements and Subchapter G - License Renewal.

No other sections are affected by the amendments.

§273.7. *Inactive Licenses [and Retired License for Volunteer Charity Care].*

(a) Placing a license on inactive status. A person who is licensed by the Board [board] to practice optometry but who is not en-

gaged in the practice of optometry in this state may place the license on inactive status at the time of license renewal [or during a license year] as follows.

~~[(1)] [To place a license on inactive status at the time of renewal, the] The licensee shall:~~

~~(1) [(A)] complete and submit before the expiration date [of January 1 of each year] a license renewal application provided by the Board [board];~~

~~(2) [(B)] state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice optometry in Texas while the license is inactive; and~~

~~(3) [(C)] pay the fee for renewal of license as specified in §273.4 of this title (relating to Fees (Not Refundable) [Optometry Fees]). [The fee for renewal of license shall not be subject to the Section 351.153 of the Texas Optometry Act.] Penalty fees as provided by Section 351.304 of the Act, will apply to those received after December 31 of the applicable renewal period.~~

~~[(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall: }~~

~~[(A) return the current renewal certificate to the board office;]~~

~~[(B) submit a signed statement stating that the licensee shall not practice optometry in Texas while the license is inactive, and the date the license is to be placed on inactive status;]~~

~~[(C) pay the fee for issuance of an amended renewal certificate as specified in §273.4 of this title (relating to Optometry Fees).]~~

(b) Reactivation of an Inactive License.

~~[(1)] A holder of a license that is on inactive status may return the license to active status by:~~

~~(1) [(A)] applying for active status on a form prescribed by the Board [board];~~

~~(2) [(B)] providing proof of completion certificates from approved continuing education programs as specified in Chapter 275 of this title (relating to Continuing Education Requirements) for the number of hours that would otherwise have been required for the renewal of the license. Approved continuing education earned within the two years [calendar year] prior to the licensee applying for the return to active status may be applied toward the continuing education requirement; and~~

~~(3) [(C)] paying the license renewal fee [for issuance of an amended renewal certificate as] specified in §273.4 of this chapter [title] (relating to [Optometry] Fees (Not Refundable)) [;]~~

~~[(D) paying the fee imposed by Section 351.153 of the Act, if the licensee begins practice within the state].~~

~~[(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §273.4 of this title (relating to Optometry Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the license renewal fee as well as a fee for issuance of an amended certificate to practice optometry as specified in §273.4 of this title.]~~

(c) Prohibition against practicing optometry in Texas. A holder of a license that is on inactive status shall not practice optometry in this state. The practice of optometry by a holder of a license that

is on inactive status constitutes the practice of optometry without a license.

[(d) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to subsections (d) - (k) of this section.]

[(e) Application. An applicant holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements) (Rule 275.1)].

[(f) Application by Expired Licensee. A former licensee whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a therapeutic Retired License must have been licensed by the Board as a therapeutic optometrist. An applicant for a therapeutic Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application.]

[(g) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.]

[(h) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies); or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.]

[(i) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this title].

[(j) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.]

[(k) Reinstatement of an Active License by a Holder of a Retired License. The Board may reinstate an active license to applicants

who hold a Retired License pursuant to the requirements of this subsection. Applicants may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this title. Applicants must supply proof that the continuing education requirements for an active license have been met. If the Board approves the application to reinstate the active license, the Board may issue the license once the requirements of subsection (b)(1)(C) and (D) have been met. An active license will not be issued to a holder of a Retired License who applied for that license under subsection (f) of this section.]

#### §273.8. *Renewal of License.*

##### (a) Expired license.

(1) If a license is not renewed on or before the expiration date, it becomes expired. All licenses renew on a biennial basis. Initial [Beginning January 1, 2021, one-half of licenses must be renewed on a biennial basis. Beginning January 1, 2022, all licenses must be renewed on a biennial basis. Beginning January 1, 2021, initial] licenses expire on the second January 1 after the date the license is first issued [; except for licenses issued pursuant to §273.14 of this title (relating to License Applications for Military Service Member, Military Veteran, and Military Spouse)].

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board [board] the amount of one and one-half times the renewal fee.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Board [board] the amount of two times the renewal fee.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by reapplying and [taking and] passing the jurisprudence exam and complying with the requirements and procedures for obtaining an initial license. However, the Board may reinstate a license without requiring reapplication and reexamination of the jurisprudence examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for reinstatement. The person shall be required to furnish documentation of continuous practice for the two-year period and pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.

(5) For licenses expired for more than one year, if [If] the person was not licensed as a therapeutic optometrist when the license expired, the person must also complete the requirements for therapeutic license in §§280.1 - 280.3 of this title (relating to Application for Certification Required; Education; Certified Therapeutic Optometrist Examination, respectively) prior to obtaining a new license.

[(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.]

~~[(6) Written notice of the impending license expiration will be sent to the licensee at the licensee's last known address, according to the records of the board.]~~

~~(6) [(7)] A licensee receiving a felony or misdemeanor criminal conviction as outlined under Occupations Code Chapter 53 [; including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, other than a Class C Misdemeanor traffic violation,] shall report the [order of] conviction [; deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision] on the next license renewal. This requirement is in addition to the 30 day reporting requirement in §277.5 of this title (relating to Convictions). This paragraph does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the Board [board] to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.~~

~~(7) [(8)] Only an active licensee who has provided a complete fingerprint criminal history report to the Board is eligible to renew a license. [During the period 2018 to 2022, one-fifth of current active licensees who have not submitted the report will be notified each year by the Board to provide the report. Licensees so notified shall submit fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority. A license will not be renewed until the notified licensee has complied with the requirement to submit fingerprints.]~~

(b) Mandatory Continuing Education for Renewal of License.

(1) The Board [board] may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of this title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements prior to the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the Board [board] with certified [attendance] records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency. Education obtained for renewal of an expired license cannot be applied toward subsequent renewal of license.

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the Board [board] the license renewal fee with a late penalty fee authorized by §351.304 of the Act, plus a penalty authorized by §351.308 of the Act [; in an amount equal to the amount of the license renewal fee].

(5) The Executive Director [executive director] shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

(c) Outstanding Administrative Penalty or Failure to Comply with Board Condition.

(1) The Board may refuse to renew a license to a person who has:

(A) not paid an administrative penalty owed to the Board at the time of renewal; or

(B) not complied with a term or condition of a disciplinary order or agreement issued by the Board.

(2) The Board may refuse to renew a license, until such time as:

(A) every administrative penalty payable on or before the time of renewal is paid; or

(B) all terms or conditions of a disciplinary order or agreement issued by the Board are satisfied.

§273.12. Profile Information.

(a) All licensees shall provide, on each application for renewal of license, the information listed in subsection (b). New licensees shall provide the information listed in subsection (b) prior to receiving a license.

(b) Each license holder is required to furnish:

(1) the name of the license holder and the address and telephone number of the license holder's primary practice location; and

(2) a personal email address.

~~[(2) whether the license holder's patient service areas, as applicable, are accessible to disabled persons, as defined by federal law;]~~

~~[(3) the type of language translating services, including translating services for a person with impairment of hearing; that the license holder provides for patients, clients, users, customers, or consumers, as applicable;]~~

~~[(4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;]~~

~~[(5) the education and training received by the license holder, as required by the licensing entity;]~~

~~[(6) any specialty certification held by the license holder;]~~

~~[(7) the number of years the person has practiced as a license holder; and ]~~

~~[(8) if applicable, any hospital affiliation of the license holder.]~~

~~[(c) The information listed in subsection (b) shall be furnished when requested by the Board on the license renewal form or, in the case of a new applicant, when requested by letter from the Board.]~~

~~[(d) The Board shall make the information available to the public, including posting the information on the Board's Internet website.]~~

§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) "Military service member" means a person who is on active duty.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged.

(4) "Active duty" means ~~current~~ full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005.

(1) Applicants currently licensed in another state.

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the ~~[Texas Optometry]~~ Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of ~~[a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and]~~ proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this chapter ~~[title]~~ (relating to Fees (Not Refundable)). Such an applicant is not exempt from exam administration fees charged for an exam administered by an organization or person other than the Board.

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. [A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2024, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued.] If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this ~~chapter~~ [title (relating to Renewal of License)].

~~[(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

~~[(ii) [(iii) With the exception of clause (ii) of this subparagraph, the] The requirements for renewing the license are the same as the requirements for renewing an active license.~~

(2) Requirements for license for military requirements for renewing an active service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

(i) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of ~~[a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and]~~ proof of the applicant's status as a military service member, military veteran or military spouse along with all documents required under §271.2 of this title.

(ii) An application fee in the same amount as the application fee set out in §273.4 of this ~~chapter~~ [title] must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) Initial military licenses expire on the second January 1 after the date the license is first issued. [A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year. Beginning 2024, a license issued under this subsection shall expire 24 months subsequent to the date the license is issued.] If the initial license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee prior to the expiration date set in §273.8 of this ~~chapter~~ [title (relating to Renewal of License)].

~~[(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.]~~

~~[(ii) [(iii) With the exception of clause (ii) of this subparagraph, the] The requirements for renewing the license are the same as the requirements for renewing an active license.~~

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

(e) Alternate licensing procedure for military spouse authorized by Texas Occupations Code §55.0041.

(1) Application.

(A) The military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another

state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the [Texas Optometry] Act. For purposes of this subsection, the Board finds that every state and territory that issues a therapeutic license to a graduate of an accredited optometry school has licensing requirements that are substantially equivalent to the requirements of the [Texas Optometry] Act.

(B) The military spouse applicant shall submit:

- (i) proof of the spouse's residency in this state and a copy of the spouse's military identification card;
- (ii) a completed Federal Bureau of Investigation fingerprint card provided by the Board;
- (iii) an official license verification from the state in which the applicant is licensed that has licensing requirements substantially equivalent to the [Texas Optometry] Act; and
- (iv) application form [with proof of identity].

(2) License

(A) A license issued under this subsection:

- (i) shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license,
- (ii) will expire three years after the license is issued, or if occurring prior to the expiration of the three-year period, the date when the military spouse is no longer stationed at a military installation in this state, and
- (iii) may not be renewed.

(B) The application and license is exempt from the Texas Jurisprudence Examination and the application fee and initial license fee in §273.4 of this chapter [title].

§273.15. Retired License for Volunteer Charity Care.

(a) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to this section.

(b) Application. An optometrist holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements).

(c) Application by Expired Licensee. A former therapeutic optometrist whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this chapter. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years

of practice, and status of the license holder at the time of the application.

(d) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(e) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(f) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this chapter.

(g) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

(h) Reinstatement of an Active License by a Holder of a Retired License. Retired licensees may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this chapter. Applicants must supply proof that the continuing education requirements for an active license have been met.

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 15, 2023.

TRD-202301788

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8500



## TITLE 25. HEALTH SERVICES

### PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

#### CHAPTER 701. POLICIES AND PROCEDURES

##### 25 TAC §701.3

The Cancer Prevention and Research Institute of Texas ("CPRI" or "the Institute") proposes amending 25 Texas Administrative Code §701.3(29) relating to the definition of "Grant

Progress Report" and §701.3(63) relating to the definition of "Scope of Work."

#### Background and Justification

CPRIT proposes a change to §701.3(63) to amend the defined term, "Scope of Work," to include "specific aims and subaims, if appropriate." Grant applicants submit a Scope of Work with their grant application and, if approved, the Scope of Work becomes part of the grant contract. Currently, the term includes project goals, objectives, timelines and milestones; the proposed amendment would add "aims and subaims." A Request for Applications will specify exactly what a grant applicant must submit to CPRIT, including goals and objectives or aims and subaims.

The proposed amendment to §701.3(29) that defines "Grant Progress Report" removes a reference to "goals and objectives" and replaces it with "Scope of Work" so that the term is used consistently throughout CPRIT's administrative rules. The amendment does not substantively change the meaning of "Grant Progress Report."

#### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

#### Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

#### Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 3, 2023. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to [kdoyle@cpriti.texas.gov](mailto:kdoyle@cpriti.texas.gov) or by facsimile transmission to (512) 475-2563.

#### Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

#### §701.3. Definitions.

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

- (1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.
- (2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.
- (3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.
- (4) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.
- (5) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.
- (6) Authorized Signing Official (ASO)--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.
- (7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.
- (8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.
- (9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.
- (10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Employees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the Scope of Work [goals and objectives] of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.



(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, biologics, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(51) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of \$250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submit-

ting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister;

(B) a husband and wife are related to each other in the first degree of affinity. For other relationship by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components. The Request for Applications includes any associated written instructions provided by the Institute and available to all Grant Applicants.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives or specific aims and subaims, if appropriate, of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

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 19, 2023.

TRD-202301843

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8487



## CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

### 25 TAC §§703.6, 703.7, 703.10, 703.21, 703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §§703.6, 703.7, 703.10, 703.21, and 703.25 to consistently use the term "Scope of Work" throughout the Chapter.

## Background and Justification

Section 701.3 defines "Scope of Work" and currently includes the goals, objectives, timelines and milestones of a grant project. The proposed amendments to Chapter 703 replace inconsistent iterations of goals and objectives with the consistent use of Scope of Work. The proposed amendments do not change any substantive requirements in Chapter 703.

## Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

## Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

## Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

## Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 3, 2023. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to [kdoyle@cprit.texas.gov](mailto:kdoyle@cprit.texas.gov) or by facsimile transmission to (512) 475-2563.

## Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

## §703.6. Grant Review Process.

(a) For all Grant Applications that are not administratively withdrawn by the Institute for noncompliance or otherwise withdrawn by the Grant Applicant, the Institute shall use a two-stage Peer Review process.

(1) The Peer Review process, as described herein, is used to identify and recommend meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control projects for Grant Award consideration by the Program Integration Committee and the Oversight Committee.

(2) Peer Review will be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(b) The two stages of the Peer Review Process used by the Institute are:

(1) Evaluation of Grant Applications by Peer Review Panels; and

(2) Prioritization of Grant Applications by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council, as may be appropriate for the Grant Program.

(c) Except as described in subsection (e) of this section, the Peer Review Panel evaluation process encompasses the following actions, which will be consistently applied:

(1) The Institute distributes all Grant Applications submitted for a particular Grant Mechanism to one or more Peer Review Panels.

(2) The Peer Review Panel chairperson assigns each Grant Application to no less than two panel members that serve as the Primary Reviewers for the Grant Application. Assignments are made based upon the expertise and background of the Primary Reviewer in relation to the Grant Application.

(3) The Primary Reviewer is responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the Primary Reviewer's general impression of the Grant Application's merit. The Primary Reviewers' individual Overall Evaluation Scores are averaged together to produce a single initial Overall Evaluation Score for the Grant Application.

(4) The Peer Review Panel meets to discuss the Grant Applications assigned to the Peer Review Panel. If there is insufficient time to discuss all Grant Applications, the Peer Review Panel chairperson determines the Grant Applications to be discussed by the panel. The chairperson's decision is based largely on the Grant Application's initial Overall Evaluation Score; however, a Peer Review Panel member may request that a Grant Application be discussed by the Peer Review Panel.

(A) If a Grant Application is not discussed by the Peer Review Panel, then the initial Overall Evaluation Score serves as the final Overall Evaluation Score for the Grant Application. The Grant Application is not considered further during the Grant Review Cycle.

(B) If a Grant Application is discussed by the Peer Review Panel, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(i) The panel chairperson participates in the discussion but does not score Grant Applications.

(ii) A Primary Reviewer has the option to revise his or her score for the Grant Application after panel discussion or to keep the same score submitted during the initial review.

(C) If the Peer Review Panel recommends changes to the Grant Award funds amount requested by the Grant Applicant or to the Scope of Work [~~goals and objectives or timeline~~] for the proposed project, then the recommended changes and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(5) At the conclusion of the Peer Review Panel evaluation, the Peer Review Panel chairperson submits to the appropriate Review Council a list of Grant Applications discussed by the panel ranked in order by the final Overall Evaluation Score. Any changes to the Grant Award funding amount or to the Scope of Work [~~project goals and objectives or timeline~~] recommended by the Peer Review Panel shall be provided to the Review Council at that time.

(d) The Review Council's prioritization process for Grant Award recommendations encompasses the following actions, which will be consistently applied:

(1) The Review Council prioritizes the Grant Application recommendations across all the Peer Review Panels by assigning a Numerical Ranking Score to each Grant Application that was discussed by a Peer Review Panel. The Numerical Ranking Score is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(2) The Review Council's recommendations are submitted simultaneously to the presiding officers of the Program Integration Committee and Oversight Committee. The recommendations, listed in order by Numerical Ranking Score, shall include:

(A) An explanation describing how the Grant Application meets the Review Council's standards for Grant Award funding;

(B) The final Overall Evaluation Score assigned to the Grant Application by the Peer Review Panel, including an explanation for ranking one or more Grant Applications ahead of another Grant Application with a more favorable final Overall Evaluation Score; and

(C) The specified amount of the Grant Award funding for each Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the Scope of Work [~~goals and objectives or timeline~~].

(3) A Grant Award recommendation is not final until the Review Council formally submits the recommendation to the presiding officers of the Program Integration Committee and the Oversight Committee. The Program Integration Committee, and, if appropriate, the

Oversight Committee must make a final decision on the Grant Award recommendation in the same state fiscal year that the Review Council submits its final recommendation.

(e) Circumstances relevant to a particular Grant Mechanism or to a Grant Review Cycle may justify changes to the dual-stage Peer Review process described in subsections (c) and (d) of this section. Peer Review process changes the Institute may implement are described in this subsection. The list is not intended to be exhaustive. Any material changes to the Peer Review process, including those listed in this subsection, shall be described in the Request for Applications or communicated to all Grant Applicants.

(1) The Institute may use a preliminary evaluation process if the volume of Grant Applications submitted pursuant to a specific Request for Applications is such that timely review may be impeded. The preliminary evaluation will be conducted after Grant Applications are assigned to Peer Review Panels but prior to the initial review described in subsection (c) of this section. The preliminary evaluation encompasses the following actions:

(A) The criteria and the specific Grant Application components used for the preliminary evaluation shall be stated in the Request for Applications;

(B) No less than two Peer Review Panel members are assigned to conduct the preliminary evaluation for a Grant Application and provide a preliminary score that conveys the general impression of the Grant Application's merit pursuant to the specified criteria; and

(C) The Peer Review Panel chairperson is responsible for determining the Grant Applications that move forward to initial review as described in subsection (c) of this section. The decision will be based upon preliminary evaluation scores. A Grant Application that does not move forward to initial review will not be considered further, and the average of the preliminary evaluation scores received becomes the final Overall Evaluation Score for the Grant Application.

(2) The Institute shall assign all Grant Applications submitted for recruitment of researchers and clinicians to the Scientific Review Council.

(A) The Scientific Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the proposed recruitment.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one recruitment Grant Application is reviewed by the Scientific Review Council during the Grant Review Cycle, then the Scientific Review Council shall assign a Numerical Ranking Score to each Grant Application to convey its prioritization ranking.

(D) If the Scientific Review Council recommends a change to the Grant Award funds requested by the Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Scientific Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(3) The Institute may assign continuation Grant Applications to the appropriate Review Council.

(A) The Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the progress and continued funding.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one continuation Grant Application is reviewed by the Review Council during the Grant Review Cycle, then the Review Council shall assign a Numerical Ranking Score to each continuation Grant Application to convey its prioritization ranking.

(D) If the Review Council recommends a change to the Grant Award funds or to the Scope of Work [~~scope of work or timeline~~] requested by the continuation Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(4) The Institute's Peer Review process described in subsections (c) and (d) of this section may include the following additional process steps for Product Development of Cancer Research Grant Applications:

(A) A Grant Applicant may be invited to deliver an in-person presentation to the Peer Review Panel. The Product Development Review Council chairperson is responsible for deciding which Grant Applicants will make in-person presentations. The decision is based upon the initial Overall Evaluation Scores of the primary reviewers following a discussion with Peer Review Panel members, as well as explicit criteria published in the Request for Applications.

(i) Peer Review Panel members may submit questions to be addressed by the Grant Applicant at the in-person presentation.

(ii) A Grant Application that is not presented in-person will not be considered further. The average of the primary reviewers' initial Overall Evaluation Scores will be the final Overall Evaluation Score for the Grant Application.

(iii) Following the in-person presentation, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(B) A Grant Application may undergo business operations and management due diligence review and an intellectual property review. The Peer Review Panel submits a list of applications recommended for due diligence review to the Product Development Review Council. The Product Development Review Council decides which Grant Applications submitted by the Peer Review Panel will undergo business operations and management due diligence and intellectual property review. The decision is based upon the Grant Application's final Overall Evaluation Score, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications. A Grant Application that is not recommended for due diligence and intellectual property review will not be considered further.

(i) Business operations and management due diligence may be conducted by an outside vendor, contracted by the Institute or by members of the Product Development Review Council.

(ii) It will be at the Institute's discretion as to who to use to perform business operations and management due diligence; factors may include volume of work and expertise required.

(C) After receipt of the business operations and management due diligence and intellectual property reviews for a Grant Application, the Product Development Review Council and the Primary Reviewers meet to determine whether to recommend the Grant Application for a Grant Award based upon the information set forth in the due diligence and intellectual property reviews. The Product Development Review Council may recommend changes to the Grant Award budget and Scope of Work. [~~goals and objectives or timeline~~]

(D) The Product Development Review Council assigns a Numerical Ranking Score to each Grant Application recommended for a Grant Award.

(f) Institute Employees and Oversight Committee members may attend Peer Review Panel and Review Council meetings. If an Institute Employee or an Oversight Committee member attends a Peer Review Panel meeting or a Review Council meeting, the attendance shall be recorded and the Institute Employee or Oversight Committee member shall certify in writing compliance with the Institute's Conflict of Interest rules. The Institute Employee's and Oversight Committee member's attendance at the Peer Review Panel meeting or Review Council meeting is subject to the following restrictions:

(1) Unless waived pursuant to the process described in Chapter 702, §702.17 of this title (relating to Exceptional Circumstances Requiring Participation), Institute Employees and Oversight Committee members shall not be present for any discussion, vote, or other action taken related to a Grant Applicant if the Institute Employee or Oversight Committee member has a Conflict of Interest with that Grant Applicant; and

(2) The Institute Employee or Oversight Committee member shall not participate in a discussion of the merits, vote, or other action taken related to a Grant Application, except to answer technical or administrative questions unrelated to the merits of the Grant Application and to provide input on the Institute's Grant Review Process.

(g) The Institute's Chief Compliance Officer shall observe meetings of the Peer Review Panel and Review Council where Grant Applications are discussed.

(1) The Chief Compliance Officer shall document that the Institute's Grant Review Process is consistently followed, including observance of the Institute's established Conflict of Interest rules, and that participation by Institute employees, if any, is limited to providing input on the Institute's Grant Review Process and responding to committee questions unrelated to the merits of the Grant Application. Institute Program staff shall not participate in a discussion of the merits, vote, or any other action taken related to a Grant Application.

(2) The Chief Compliance Officer shall report to the Oversight Committee prior to a vote on the award recommendations specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(3) Nothing herein shall prevent the Institute from contracting with an independent third party to serve as a neutral observer of meetings of the Peer Review Panel and/or the Review Council where Grant Applications are discussed and to assume the reporting responsibilities of the Chief Compliance Officer described in this subsection. In the event that the independent third party observes the meeting of the

Peer Review Panel and/or the Review Council, then the independent third party reviewer shall issue a report to the Chief Compliance Officer specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(h) Excepting a finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process), the Review Council's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Program Integration Committee and the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Review Council shall not be considered further during the Grant Review Cycle.

(i) At the time that the Peer Review Panel or the Review Council concludes its tasks for the Grant Review Cycle, each member shall certify in writing that the member complied with the Institute's Conflict of Interest rules. An Institute Employee or an Oversight Committee member attending one or more Peer Review Panel meetings during the Grant Review Cycle shall certify compliance with the Institute's Conflict of Interest rules.

(j) The Institute shall retain a review record for a Grant Application submitted to the Institute, even if the Grant Application did not receive a Grant Award. Such records will be retained by the Institute's electronic Grant Management System. The records retained by the Institute must include the following information:

(1) The final Overall Evaluation Score and Numerical Ranking Score, if applicable, assigned to the Grant Application;

(2) The specified amount of the Grant Award funding for the Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the Scope of Work [goals and objectives or timeline];

(3) The Scientific Research and Prevention Programs Committee that reviewed the Grant Application;

(4) Conflicts of Interest, if any, with the Grant Application identified by a member of the Scientific Research and Prevention Programs Committee, the Review Council, the Program Integration Committee, or the Oversight Committee; and

(5) Documentation of steps taken to recuse any member or members from the Grant Review Process because of disclosed Conflicts of Interest.

(k) For purposes of this rule, a Peer Review Panel chairperson or a Review Council chairperson that is unable to carry out his or her assigned duties due to a Conflict of Interest with regard to one or more Grant Applications or for any other reason may designate a co-chairperson from among the appointed Scientific Research and Prevention Programs committee members to fulfill the chairperson role. Such designation shall be recorded in writing and include the specific time and extent of the designation.

#### §703.7. *Program Integration Committee Funding Recommendation.*

(a) The Institute uses a Program Review process undertaken by the Institute's Program Integration Committee to identify and recommend for funding a final list of meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control Program projects that are in the best overall interest of the State.

(b) Program Review shall be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(c) The Program Integration Committee shall meet pursuant to a schedule established by the Chief Executive Officer, who serves as the Committee's presiding officer, to consider the prioritized list of Grant Applications submitted by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council.

(d) The Program Integration Committee shall approve by a majority vote a final list of Grant Applications recommended for Grant Awards to be provided to the Oversight Committee, including a list of Grant Applications, if any, that have been deferred until a future meeting of the Program Integration Committee. In composing the final list of Grant Applications recommended for Grant Award funding, the Program Integration Committee shall:

(1) Substantially base the list upon the Grant Award recommendations submitted by the Review Council.

(2) To the extent possible, give priority for funding to Grant Applications that:

(A) Could lead to immediate or long-term medical and scientific breakthroughs in the area of Cancer Prevention or cures for cancer;

(B) Strengthen and enhance fundamental science in Cancer Research;

(C) Ensure a comprehensive coordinated approach to Cancer Research and Cancer Prevention;

(D) Are interdisciplinary or interinstitutional;

(E) Address federal or other major research sponsors' priorities in emerging scientific or Technology fields in the area of Cancer Prevention, or cures for cancer;

(F) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(G) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(H) Have a demonstrable economic development benefit to this state;

(I) Enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(J) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or Technology research capabilities; and

(K) Address the goals of the Texas Cancer Plan.

(3) Document the factors considered in making the Grant Award recommendations, including any factors not listed in paragraph (2) of this subsection;

(4) Explain in writing the reasons for not recommending a Grant Application that was recommended for a Grant Award by the Review Council or for deferring a Grant Application recommendation until a future meeting date;

(5) Specify the amount of Grant Award funding for each Grant Application.

(A) Unless otherwise specifically stated, the Program Integration Committee adopts the changes to the Grant Award amount recommended by the Review Council.

(B) If the Program Integration Committee approves a change in the Grant Award amount that was not recommended by the Review Council, then the Grant Award amount and a written explanation for the change shall be provided.

(6) Specify changes, if any, to the Grant Application's Scope of Work [goals and objectives or timeline] recommended for a Grant Award and provide an explanation for the changes made;

(7) Address how the funding recommendations meet the annual priorities for Cancer Prevention, Cancer Research and Product Development programs and affect the Institute's overall Grant Award portfolio established by the Oversight Committee; and

(8) Provide a list of deferred Grant Applications, if any.

(e) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations or deferrals is not unanimous, then the Program Integration Committee Member or Members not voting with the majority may submit a written explanation to the Oversight Committee for the vote against the final list of Grant Award recommendations or deferrals. The explanation may include the Program Integration Committee Member or Members' recommended prioritized list of Grant Award recommendations or deferrals.

(f) The Program Integration Committee's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Program Integration Committee shall not be considered further during the Grant Review Cycle, except for the following:

(1) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then, upon a motion of an Oversight Committee Member, the Oversight Committee may also consider the Grant Award recommendations submitted by the non-majority Program Integration Committee Member or Members;

(2) A finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process); or

(3) A decision by the Program Integration Committee to defer a decision to include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee until a future meeting of the Program Integration Committee, subject to subsection (k).

(g) The Chief Compliance Officer shall attend and observe Program Integration Committee meetings to document compliance with Chapter 102, Texas Health and Safety Code and the Institute's administrative rules.

(h) At the time that the Program Integration Committee's final Grant Award recommendations are formally submitted to the Oversight Committee, the Chief Executive Officer shall prepare a written affidavit for each Grant Application recommended by the Program Integration Committee containing relevant information related to the Grant Application recommendation.

(1) Information to be provided in the Chief Executive Officer's affidavit may include:

(A) The Peer Review process for the recommended Grant Application, including:

(i) The Request for Applications applicable to the Grant Application;

(ii) The number of Grant Applications submitted in response to the Request for Applications;

(iii) The name of the Peer Review Panel reviewing the Grant Application;

(iv) Whether a preliminary review process was used by the Peer Review Panel for the Grant Mechanism in the Grant Review Cycle;

(v) An overview of the Conflict of Interest process applicable to the Grant Review Cycle noting any waivers granted; and

(vi) A list of all final Overall Evaluation Scores for all Grant Applications submitted pursuant to the same Grant Mechanism, de-identified by Grant Applicant;

(B) The final Overall Evaluation Score and Numerical Ranking Score assigned for the Grant Applications recommended during the Peer Review process; and

(C) A high-level summary of the business operations and management due diligence and intellectual property reviews, if applicable, conducted for a Cancer Research Product Development Grant Application.

(2) In the event that the Program Integration Committee's final Grant Award recommendations are not unanimous and the Program Integration Committee Member or Members in the non-majority recommend Grant Applications not included on the final list of Grant Award recommendations, then the Chief Executive Officer shall also prepare a written affidavit for each Grant Application recommended by the non-majority Program Integration Committee Member or Members.

(i) To the extent that the information or documentation for one Grant Application is the same for all Grant Applications recommended for Grant Award funding pursuant to the same Grant Mechanism, it shall be sufficient for the Chief Executive Officer to provide the information or documentation once and incorporate by reference in each subsequent affidavit.

(j) At least three business days prior to the Oversight Committee meeting held to consider the Grant Applications for Grant Award funding, the Chief Executive Officer shall provide a list of Grant Applications, if any, recommended for an advance of Grant Award funds upon execution of the Grant Contract. The list shall include the reasons supporting the recommendation to advance funds.

(k) The Program Integration Committee's decision to defer the final Grant Award recommendation for a Grant Application is only effective for the state fiscal year in which the Program Integration Committee's deferral decision is made.

(1) A Grant Application that is deferred by the Program Integration Committee and is pending a final Grant Award recommendation at the end of the state fiscal year shall be considered not recommended for a Grant Award without further action from the Program Integration Committee.

(2) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year may be resubmitted by the Grant Applicant in a subsequent review cycle. Such resubmission will not count against the resubmission limit, if any, stated in the Request for Applications.

§703.10. *Awarding Grants by Contract.*

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.

(b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.

(c) The Grant Contract shall include the following provisions:

(1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable:

(A) Acknowledgment of Institute funding must include the grant number of every Institute-funded grant contributing to the work memorialized in the publication; and

(B) Subparagraph (A) of this paragraph is effective beginning September 1, 2021;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

(6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

(7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that includes information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

(10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient will abide by the Texas Grant Management Standards (TxGMS) published by the Comptroller of Public Accounts Statewide Procurement Division, if applicable, unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and TxGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact the Scope of Work [~~milestones and objectives included~~] in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient;

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and



(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee;

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, an equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation;

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application, including any proposed temporary leave of absence of a Principal Investigator, Program Director, or Company Representative;

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization; and

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract, pursuant to the process prescribed in the Grant Contract, and trigger repayment of the Grant Award funds.

*§703.21. Monitoring Grant Award Performance and Expenditures.*

(a) The Institute, under the direction of the Chief Compliance Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review--The Institute shall review Grant Award expenditures reported by Grant Recipients on the quarterly Financial Status Reports and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Grant Award Reports--The Institute shall monitor the submission of all required reports and implement a process to ensure that Grant Award funds are not disbursed to a Grant Recipient with one or more delinquent reports.

(3) Grant Progress Reports--The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the Scope of Work [~~scope of work and timeline~~] set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) Unless specifically stated otherwise herein, the annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the Scope of Work [~~scope of work~~] specified by the Grant Contract, including information, data, and program metrics regarding the achievement of the Scope of Work [~~project goals and timelines~~];

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11 of this title (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants). In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form, which shall be submitted pursuant to the timeline in §703.13 of this title (relating to Audits and Investigations).

(C) Notwithstanding subparagraph (B) of this paragraph, in the event that the Grant Recipient and Institute execute

the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the Scope of Work [scope of work] specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts, and De-Obligation of Grant Award Funds).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific tranches of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a tranche of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next tranche of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(K) A Grant Award in the prevention program with a Grant Contract effective date within the last quarter of a state fiscal

year (June 1-August 31) will have an initial reporting period beginning September 1 of the following state fiscal year.

(4) Desk Reviews--The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews--The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports--The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to meaningfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

(h) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

§703.25. *Grant Award Budget.*

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the Scope of Work [~~scope of the Grant Contract~~] and the total Approved Budget; is beneficial to the achievement of the Scope of Work [~~project objectives~~]; and is an efficient, effective use of Grant Award funds.

(e) Except as provided herein, all budget changes or transfers require Institute approval.

(1) The Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:

(A) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is 10% or less of the total budget for the applicant grant year;

(B) The transfer will not increase or decrease the total grant budget; and

(C) The transfer will not materially change the nature, performance level, or Scope of Work [~~scope of the project~~].

(2) The Institute may reverse one or more budget changes or transfers under paragraph (1) of this subsection [~~subsection (1)~~] if the Institute determines that the Grant Recipient made multiple individual budget changes or transfers within the same category that, if considered together, would require Institute approval.

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended balance for a budget line item in a Project Year exceeds twenty-five percent (25%) or more of the total budget line item amount for that year, Institute approval is required before the Grant Recipient may carry forward the unexpended balance to the next Project Year.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

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 19, 2023.

TRD-202301844

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 305-8487



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

##### 37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 443, Certification Curriculum Manual, §443.1, Approval by the Curriculum and Testing Committee, §443.3, Approval by the Texas Commission on Fire Protection, §443.5, Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule, §443.7, Effective Date of New or Revised Curricula and Training Programs Which are Voluntary, and §443.9, National Fire Protection Association Standard.

##### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect changes to how the Commission will accept proposed changes to the Curriculum Manual. Previously, proposed changes were filtered through the Fire Fighter Advisory Committee to the Commission for final approval. The Commission is proposing that the Curriculum and Testing Committee will now take any proposed changes directly to the Commission.

##### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

##### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

##### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

##### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

##### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

#### TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does 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, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, is not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

#### CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§443.1. *Approval by the Curriculum and Testing [Fire Fighter Advisory] Committee.*

(a) All proposals for new or revised curricula and training programs must be submitted to the Fire Fighter Advisory Committee for approval.

(b) The Curriculum and Testing [Fire Fighter Advisory] Committee may:

(1) submit proposals to a subcommittee formed of members of the Curriculum and Testing [Fire Fighter Advisory] Committee for study and review before approval; or

(2) submit proposals to an advisory committee formed of members of the fire service who are recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and appointed by the commission to report to the Curriculum and Testing [Fire Fighter Advisory] Committee, for study and review before approval.

(c) All proposals approved by the Curriculum and Testing [Fire Fighter Advisory] Committee shall be placed on the next scheduled meeting agenda of the Texas Commission on Fire Protection.

§443.3. *Approval by the Texas Commission on Fire Protection.*

(a) All proposals for new or revised curricula and training programs approved by the Curriculum and Testing [Fire Fighter Advisory] Committee must receive final approval by the Texas Commission on Fire Protection.

(b) Proposals not approved by the commission shall be sent back to the committee for further development. The commission shall indicate to the committee the reasons that the proposals were not approved.

§443.5. *Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule.*

(a) New curricula and training programs will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission.

(b) Changes to curricula and training programs will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission.

(c) Changes to curricula and training programs which involve reference materials will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission, as recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee, depending on the impact the change will have on the curricula or training programs.

(d) Changes to curricula and training programs that involve a safety consideration as determined by the Curriculum and Testing [Fire Fighter Advisory] Committee shall become effective immediately following final approval by the commission.

§443.7. *Effective Date of New or Revised Curricula and Training Programs Which Are Voluntary.*

(a) New curricula and training programs will become effective on the date recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and specified by the commission.

(b) Changes to curricula and training programs will become effective on the date recommended by the Curriculum and Testing [Fire Fighter Advisory] Committee and specified by the commission.

(c) Changes to curricula and training programs that involve a safety consideration as determined by the Curriculum and Testing [Fire Fighter Advisory] Committee shall become effective immediately following final approval by the commission.

§443.9. *National Fire Protection Association Standard.*

(a) All curricula and training programs must, as a minimum, meet the standards, to include manipulative skills objectives and knowledge objectives, of the current NFPA standard pertaining to the

discipline, if such a standard exists and is subject to subsection (c) of this section.

(b) New curricula and training programs presented to the Curriculum and Testing [~~Fire Fighter Advisory~~] Committee must, as a minimum, meet the standards of the current edition of the applicable NFPA standard for the discipline, if such a standard exists.

(c) If an [~~a~~] NFPA standard is adopted or an existing NFPA standard is revised, all curricula and training programs must meet the standards of the new or revised applicable NFPA standard within three years of the official adoption date of the applicable NFPA standard.

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 15, 2023.

TRD-202301786

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: July 2, 2023

For further information, please call: (512) 936-3841

