ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 8. AGRICULTURAL HAZARD COMMUNICATION REGULATIONS

4 TAC §§8.1 - 8.12

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code, Chapter 8 (Agricultural Hazard Communication Regulations), §8.1, General Provisions; §8.2, Definitions; §8.3, Agricultural Laborer; §8.4, Covered Employer; §8.5, Designated Representative; §8.6, Material Safety Data Sheet (MSDS); §8.7, Workplace Chemical List; §8.8, Crop Sheets; §8.9, Providing Protective Clothing, Equipment, and Devices; §8.10, Retaliation; §8.11, Training Program; and §8.12, Emergency Response. The amendments are adopted without changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8363) and will not be republished.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of the December 23, 2022 issue of the *Texas Register* (47 TexReg 8764).

The amendments to §8.1 update a reference to legal authority to reflect codification, change references to the federal Worker Protection Standard and Code of Federal Regulations to be similar to their definitions in §8.2, remove an unnecessary abbreviation for Workplace Chemical List, update a reference to §8.6 to account for an amendment to its title, update a reference to §8.11 on hiring requirements for covered employers, and change the term "title" to "chapter" as the term "chapter" is mainly used throughout Title 4, Part 1.

The amendments to §8.2 remove an outdated reference to Chapter 125 of the Texas Agriculture Code (Code); update references to Chapter 76 of the Code, the federal Worker Protection Standard, and Texas A&M AgriLife Extension Service (AgriLife); remove unnecessary definitions for "distributor" and "workplace" as those terms are already defined in the Code, §125.002; remove an unnecessary definition for the Department as it is included in the general definitions for Title 4, Part 1, Chapter 1 of the Texas Administrative Code; correct spelling and grammatical errors, clarify internal references to this chapter; and update outdated language.

The amendments to §8.3 revise outdated language, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §8.4 replaces specific references to quantities, such as "55 gallons or 500 pounds" of covered pesticide chemicals, to "threshold amount" as that phrase is already defined in this chapter, update outdated language, and correct spelling and grammatical errors.

The amendments to §8.5 update and supplement language to clarify references for the public and stakeholders.

The amendments to §8.6 add the phrase, "safety data sheet," and a corresponding acronym, "SDS," to refer to a material safety data sheet, make a conforming change to the rule's heading, and update outdated language.

The amendments to §8.7 update references to the Code, §76.114, and §7.33 of Title 4, Part 1 of the Texas Administrative Code; replace references to material safety data sheets and associated acronym, MSDS, with the term, "safety data sheet," and associated acronym, "SDS," to reflect the most prevalent references used for the term; clarify references to the "Occupational Health and Safety Administration"; add language allowing covered employers to obtain workplace chemical list forms from the Department's website; clarify internal references to this chapter; update outdated language; correct grammatical errors; and make editorial changes to language to improve the rule's readability.

The amendments to §8.8 revise language to reflect terms, which are defined in this chapter; update outdated language; correct grammatical errors; and make non-substantive editorial changes to language to improve the rule's readability.

The amendments to §8.9 incorporate conforming changes to the replacement of the term, "material safety data sheets," with the term, "safety data sheet," and update outdated language.

The amendments to §8.10 update outdated language and correct a typographical error.

The amendments to §8.11 remove references to specific counties described as containing a hired farm labor work force of 2,000 or more to account for all counties that now meet this description; revise language to reflect terms, which are defined in this chapter; and update outdated language.

The amendments to §8.12 incorporate conforming changes to reflect use of defined term, "threshold amount," correct grammatical errors, and update outdated language.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Section 125.002 of the Texas Agriculture Code (Code), which gives rulemaking authority to the Department to determine who falls under the definition of an agricultural laborer; Section 125.006 of the Code, which authorizes the Department to promulgate rules to require

chemical manufacturers to submit material safety data sheets for chemicals covered by Chapter 125; Section 125.009 of the Code, which authorizes the Department by rule to determine to provide a pesticide training program for agricultural laborers in certain counties; Section 125.010 of the Code, which authorizes the Department by rule to determine certain groupings of crops constituting a single crop for the purpose of developing crop sheets; and Section 125.014 of the Code, which authorizes the Department to adopt rules and administrative procedures to carry out the purposes of Chapter 125.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN CERTIFICATION MARK

The Texas Department of Agriculture (Department) adopts new §17.50, concerning Statement of Purpose, to Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter C. In addition, the Department adopts an amendment to the heading of the Subchapter C and amendments to §17.51, concerning Definitions; §17.52, concerning Application for Registration to Use the GO TEXAN Certification Mark; §17.53, concerning Action on Application; §17.55, concerning Registration and Use of the GO TEXAN Certification Mark; §17.56, concerning Termination of Registration to Use the GO TEXAN Certification Mark; §17.57, concerning Associate GO TEXAN Registrants; §17.59, concerning Non-Agricultural Member; Other Products; Products Produced in this State; and §17.63, concerning Licensing of the GO TEXAN Certification Mark. The Department further adopts the repeal of §17.60, concerning GO TEXAN Restaurant Program; and §17.62, concerning GO TEXAN Farm and Ranch Program. The new rule, amendments to §§17.52, 17.53, 17.55, and 17.56, and repeals are adopted without changes to the proposed text, as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8187) and will not be republished. The amendments to §§17.51, 17.57, 17.59, and 17.63 are adopted with changes to the proposed text, as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8187) and will be republished. The Department has made non-substantive changes to §17.51 from the proposed text to correct a grammatical error and place definitions in alphabetical order, and made changes to §§17.57, 17.59, and 17.63 to correct cross references to other rules. These changes result in no change to the nature or scope of the proposed text of the rule, affect no new individuals, and impose no additional requirements for compliance.

The Department identified the need for the new rule, amendments, and repeals during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of the December 16, 2022, issue of the *Texas Register* (47 TexReg 8284).

Adopted §17.50 establishes, by rule, the GO TEXAN Program, to comply with statutory requirements in Texas Agriculture Code, Section 12.0175(a).

The adopted amendments to §17.51 remove redundant definitions already contained in Title 4, Part 1, Chapter 1, which apply to Part 1 in its entirety, as well as several definitions no longer used in Subchapter C. Proposed amendments to §17.51 also add a new definition for the term, "Mark," to account for its use in this subchapter and establish a distinct definition for the phrase, "Processed in Texas," which was previously incorporated in the definition for the phrase, "Produced in Texas." In addition, proposed amendments to §17.51 modify the definitions of "GO TEXAN Program" to reflect the Department's revised mission statement for the program, "Produced in Texas" to remove the language now comprising the new definition of "Processed in Texas," "Restaurant" to align with the definition of food establishments promulgated by the Texas Department of State Health Services, and "Texas agricultural product" to include additional language to establish a more comprehensive definition, as well as make editorial changes for greater clarity and to improve the rule's readability.

The adopted amendments to §17.52 replace references to "members" with the term, "registrant," which more accurately describes the legal rights of a user of the GO TEXAN certification mark; update language describing the application submission process; reflect changes to correct internal references and conform to the proposed repeal of the GO TEXAN Restaurant Program and the prior repeal of the GO TEXAN Wildlife Program; allow the Department to consider, during its evaluation of applicants or registrants, information that may negatively affect the existence of the GO TEXAN certification mark; and make editorial changes to provide greater clarity for stakeholders and the public.

The adopted amendments to §17.53 consist of a conforming change to the proposed repeal of the GO TEXAN Restaurant Program and nonsubstantive changes to enhance readability.

The adopted amendments to §17.55 replace use of the terms, "membership" and "member," with "registration" and "registrant," which more accurately describes the legal rights of a user of the Department's current intellectual property (the GO TEXAN certification mark); provided, however, that upon successful registration of new intellectual property with the United States Patent and Trademark Office and Texas Secretary of State by the Department's outside legal counsel, the Department may implement additional restructuring of the GO TEXAN Program, including corresponding new intellectual property, as appropriate. The proposed amendments to §17.55 further incorporate nonsubstantive changes to enhance readability.

The adopted amendments to §17.56 reflect a conforming change to the proposed repeal of the GO TEXAN Restaurant Program and make nonsubstantive changes to improve the rules' readability.

The adopted amendments to §17.57 replace use of the terms, "membership" and "member," with "participation" and "participant," which more accurately describes the legal rights of an Associate GO TEXAN user of the department's current intellectual

property, the GO TEXAN certification mark; make a conforming change to the proposed repeal of the GO TEXAN Partner Program, Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter G; correct internal references; and reflect nonsubstantive changes to enhance readability.

The adopted amendments to §17.59 also make a conforming change to the proposed repeal of the GO TEXAN Partner Program, published in the December 2, 2022, issue of the *Texas Register* (47 TexReg 8002); correct internal references; and reflect nonsubstantive changes to enhance readability.

The adopted repeal of §§17.60 and 17.62 reflects program updates adopted by the Department to the structure of the GO TEXAN Program. Registrants of the GO TEXAN Restaurant Program may continue to participate in the GO TEXAN Program as Associate GO TEXAN registrants. Although the GO TEXAN Farm and Ranch Program is being repealed, products from farms and ranches remain eligible for the GO TEXAN Program.

The adopted amendments to §17.63 update application and licensing fees for businesses that seek to use the GO TEXAN Certification Mark in a manner other than that authorized by this subchapter.

The Department received no comments regarding the proposed new rule, proposed rule amendments, and proposed repeals.

4 TAC §§17.50 - 17.53, 17.55 - 17.57, 17.59, 17.63

The new rule and amendments are adopted pursuant to Section 12.0175 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules necessary for the administration of the GO TEXAN Program.

§17.51. Definitions.

In addition to the general definitions contained within Title 4, Part 1, Chapter 1, §1.1, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. For purposes of this subchapter, the department shall have sole discretion to determine whether a product meets the qualifications defined in this section.

(1) Associate GO TEXAN Registrants--Persons who apply and are granted limited use of the mark by the department for assistance in the promotion and implementation of the GO TEXAN Program.

(2) Equine species--A horse, pony, mule, or donkey that was foaled in Texas or has resided in Texas for at least one year.

(3) Food--Agricultural products produced or processed in Texas for human consumption.

(4) GO TEXAN certification mark--The GO TEXAN certification mark is a certification mark that is registered with the United States Patent and Trademark Office and the Texas Secretary of State's office by the department. The GO TEXAN certification mark appears as follows:
Figure: 4 TAC §17.51(4)

(5) GO TEXAN Program--A Texas Department of Agriculture initiative promoting Texas-made, grown, manufactured, or processed products; services; and communities; and supporting Texas-based businesses and connecting them with customers across the Lone Star State and around the world.

(6) Horticulture products--Nursery, floral, and greenhouse plants or plant products produced in Texas from seeds, rootings, cuttings, tissue cultures, seedlings, or other propagation materials. Non-Texas plants being produced for such a period during which they are transplanted or increased in plant size and volume of container. Texas and non-Texas produced plant-based horticulture products processed in Texas.

(7) Mark--The GO TEXAN certification mark.

(8) Natural fibers--Fibers which have been produced from Texas crops or shorn from Texas livestock and which are used in textiles, apparel, and other goods. The term "natural fibers" also includes leather made from the hides of animals and reptiles.

(9) Natural woods--Forestry products produced from Texas hardwood and softwood timber including, but not be limited to, furniture, home furnishings, building construction materials, pulp, and paper.

(10) Other Products--

(A) Any product produced in Texas which is not a Texas agricultural product, as defined in paragraph (19) of this section, but is:

(i) produced, manufactured, constructed, or created within the state; or

(ii) is processed within the state such that it has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics; and

(iii) such product enhances the GO TEXAN Program;

(B) Products described in subparagraph (A) of this paragraph which are produced in Texas, but processed outside of Texas, do not meet GO TEXAN Program requirements, unless facilities for processing are not reasonably available in Texas.

(C) For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being an "other product" or processed other product and shall have the sole discretion to determine whether a product enhances the GO TEXAN Program.

(11) Processed food product--Non-Texas agricultural food product which has undergone a value-added procedure in Texas to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, or dehydrating.

(12) Processed in Texas--A product is processed in Texas if it has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics.

(13) Processed natural fiber or natural wood product--Non-Texas raw, natural fiber or natural wood which has undergone mechanical or physical changes in Texas resulting in a finished, distinct product.

(14) Produced in Texas--An agricultural product is produced in Texas if:

(A) The agricultural product is grown, raised, nurtured, sown, or cultivated within the state.

(B) Products produced in Texas but processed out of Texas do not meet GO TEXAN Program requirements unless facilities for processing are not reasonably available in Texas.

(15) Producer--Any person who:

(A) produces agricultural product(s) grown, raised, nurtured, sown, or cultivated in the State of Texas;

(B) produces Texas processed agricultural product(s); or

(C) produces Texas product(s) that is/are not processed outside of Texas, unless facilities for processing are not reasonably available in Texas.

(16) Registrant--A person in good standing with the department who is authorized to use the GO TEXAN certification mark for the purpose of verifying their product or service as grown, produced, manufactured, or provided in Texas.

(17) Restaurant--A food establishment, as defined in Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K (Texas Department of State Health Services; Texas Food Establishments), that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(A) such as a restaurant, retail food store, satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(B) that relinquishes possession of food to a consumer directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders or delivery services that are provided by common carriers. Restaurant registrants do not include:

(i) any establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a bed and breakfast limited facility; or

(vii) a private home that receives catered or home-delivered food.

(18) Texas agricultural product--An agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable or fruit product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) food for human consumption;

(B) equine species;

(C) feed for use by livestock or poultry;

(D) fish or other aquatic species;

(E) livestock, a livestock product, or a livestock by-product;

(F) planting seed;

(G) poultry, a poultry product, or a poultry by-product; or

(H) wildlife processed for food or by-products.

(19) Texas processed agricultural product--Non-Texas agricultural product, excluding processed food product and processed natural wood and natural fiber product, which has undergone a value added procedure in Texas that changes or adds to its physical characteristics.

§17.57. Associate GO TEXAN Registrants.

(a) Statement of purpose; Applicability. This section authorizes retailers, qualified livestock shows, distributors, communities, restaurants, and other entities to become associate GO TEXAN participants and assist the department with the promotion and implementation of the GO TEXAN Program.

(b) Application process.

(1) Application to use the GO TEXAN certification mark in accordance with this section shall be made in the same manner as provided in §17.52 of this subchapter (relating to Application for Registration To Use the GO TEXAN Certification Mark).

(2) Except as otherwise provided in this section, §§17.53, 17.55, and 17.56 of this subchapter (relating to Action on Application, Registration and Use of the GO TEXAN Certification Mark, and Termination of Registration To Use the GO TEXAN Certification Mark, respectively) shall apply to entities certified under this section.

(c) Eligibility Requirements and Registrant Categories.

(1) Eligibility requirements. All retailers, livestock shows, distributors, and other entities interested in assisting the department with the promotion and implementation of the GO TEXAN Program may apply for Associate GO TEXAN participation.

(2) Limitations. Associate GO TEXAN registrants shall only use the mark for the limited purpose stated in the certificate of registration. Use of the mark by Associate GO TEXAN registrants is limited to general promotion of the GO TEXAN Program and use is subject to department rules.

(3) Livestock Shows and Festivals. A registrant's use of the mark is limited to promotion of the GO TEXAN Program at livestock shows and festivals in Texas that promote Texas agricultural products.

(4) Retailer. A registrant's use of the mark is limited to general promotion of GO TEXAN products as defined in §17.51 and §17.52 of this subchapter (relating to Definitions and Application for Registration To Use the GO TEXAN Certification Mark) in its retail locations.

(5) Other entities. A registrant's use of the mark is limited to promotion of the GO TEXAN Program, products, and participants.

(6) Distributors. A registrant's use of the mark is limited to the promotion of GO TEXAN participant's products or the general promotion of GO TEXAN products, as defined in §17.51 and §17.52 of this subchapter.

(d) Printers and media. Printers' and media companies' use of the mark is limited to reproduction of the mark for use by current GO TEXAN Program registrants and participants on their approved products. A printer may be eligible for GO TEXAN participation if it creates original works produced in Texas; or Associate participation if the printer can demonstrate its desire and ability to assist the promotion of the GO TEXAN Program and its participants and registrants.

§17.59. Non-Agricultural Member; Other Products; Products Produced in this State.

(a) Permission to use the GO TEXAN certification mark. Permission to use the GO TEXAN certification mark may be granted by the department to registrants who have been properly certified as a "Non-Agricultural Member" to promote Texas "Other Products", as defined in §17.51 of this subchapter (relating to Definitions).

(b) Application process:

(1) Application to use the GO TEXAN certification mark in accordance with this section shall be made in the same manner as provided in §17.52 of this subchapter (relating to Application for Registration to Use the GO TEXAN Certification Mark).

(2) Except as otherwise provided in this section, §§17.53, 17.55, and 17.56 of this subchapter (relating to Action on Application, Registration and Use of the GO TEXAN Certification Mark, and Termination of Registration To Use the GO TEXAN Certification Mark, respectively) shall apply to entities certified under this section.

§17.63. Licensing of the GO TEXAN Certification Mark.

(a) Except as specifically authorized under this subchapter, no person may depict, display, or use, in any manner, the GO TEXAN certification mark without obtaining prior written permission from the department. A person may seek such permission by filing an application for use of the GO TEXAN certification mark with the department. All information submitted with a request for license becomes the property of the department.

(b) A request for a license under this section must be accompanied by a $50 non-refundable application fee.

(c) Upon approval of a request, a licensee under this section shall pay a one-time royalty fee of $1,000. Failure to pay the licensing fee within 30 days of approval shall result in denial of the license and cancellation of the approved request.

(d) A license under this section is not required for the depiction, display, or use of the GO TEXAN certification mark under the following circumstances:

(1) use of the GO TEXAN certification mark to promote the GO TEXAN Program for an historical, educational, or other purpose that benefits the public if authorized in writing by the department prior to such use; or

(2) use authorized by §§17.52(b), 17.55(c)(1), 17.57(c)(2), and 17.59(a) of this subchapter (relating to Application for Registration to Use the GO TEXAN Certification Mark, Registration and Use of the GO TEXAN Certification Mark, Associate GO TEXAN Registrants, and Non-Agricultural Member; Other Products; Products Produced in this State, respectively).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Assistant General Counsel
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For further information, please call: (512) 936-9369

4 TAC §17.60, §17.62

The repeals are adopted under Section 12.0175 of Texas Agriculture Code, which allows the Department to adopt rules necessary to administer the GO TEXAN Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new and amended rules §§31.3 - 31.11, concerning Administration, without change as published in the December 2, 2022, *Texas Register* (47 TexReg 8006). The rules will not be republished.

The new and amended rules result from review of chapter 31 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Additionally, new §31.11, Family Leave Pool, is adopted in compliance with Tex. Govt. Code §661.022, which prescribes guidelines for state agency family leave pools.

With the exception of §31.4, the rules become effective according to the default timeline in Ch. 2001 of the Government Code. Rule 31.4, as amended, becomes effective on September 1, 2023.

The adopted rules do not impact any other current rules or statutes.

No formal public comments were received regarding the rules as proposed.

16 TAC §§31.3, 31.5 - 31.11

The rules are adopted pursuant to the commission's authority under §5.31 of the Alcoholic Beverage Code and the rulemaking requirements of Tex. Govt. Code §661.022.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Shana Horton
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16 TAC §31.4

The rule is adopted pursuant to the commission's authority under §5.31 of the Alcoholic Beverage Code and the rulemaking requirements of Tex. Govt. Code §661.022.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §31.10, §31.11

The Texas Alcoholic Beverage Commission adopts the repeal of 16 Texas Administrative Code §31.10 and §31.11 without changes as proposed in the December 2, 2022, *Texas Register* (47 TexReg 8011). The rules will not be republished.

The subject matter of the repealed rules is combined into a new §31.10, Complaints, adopted simultaneously with these repeals.

No formal public comments were received regarding the repeals.

These repeals are adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeals do not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 33. LICENSING

SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

16 TAC §33.55

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended rule §33.55, related to conditional approval of license and permit applications, without change as published in the December 2, 2022, *Texas Register* (47 TexReg 8012). The rule will not be republished.

Due to recent changes that have increased efficiency in license and permit application reviews, some applications are reviewed and approved before their check for the fee payment has cleared. As amended, rule 33.55 indicates that a license or permit application approved prior to the fee payment clearing is only approved subject to the condition that the fees are paid. If those fees are not paid, the rule provides a clear procedure for revocation of conditional approval.

No formal public comments were received regarding the amended rule as proposed.

The amendments are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rule does not otherwise impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 35. ENFORCEMENT

16 TAC §35.1

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new rule §35.1 related to Reporting a Breach of the Peace with one change to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4796). The rule will be republished.

The new rule results from review of chapter 35 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. New rule §35.1 is based upon current §35.32 (which is repealed in a separate, simultaneous rulemaking) and requires some license and permit holders to report certain breaches of the peace to the TABC.

The new rule clarifies the requirement that the holder of certain permits must report to the TABC certain breaches of the peace occurring on property under their direct or indirect control. It does so by adding references to the underlying statutory authority for

each license or permit type affected and adding a reference to the definition of "premises" from §11.49 of the Code into the rule subsection containing the reporting requirement, in addition to its current location within the rule's applicable definitions. Specifically identifying the license and permit holders subject to the requirement and elevating the visibility of the applicable definition of "premises" is intended to increase regulated business's understanding of and compliance with the rule.

Public comments were received from the law firm Griffith-Hughes, PLLC.

Comment 1: Griffith-Hughes commented that a license or permit holder may not be held liable under current law for reporting a breach of the peace that occurs off its premises regardless of whether the establishment is open and asked if subsection (i)(1) and (2) should therefore be stated in the disjunctive ("or") rather than the conjunctive.

Response 1: The intent of the rule is to protect a license or permit holder from liability for failure to report a breach of the peace that occurs on its premises (which by statute includes areas under its control), but not within the boundaries of the licensed premises as shown in its approved premises diagram, or if the entity does not have an approved premises diagram, as defined by statute, at a time when the establishment was closed. To clarify, the modifier "licensed" has been added to the draft rule.

Comment 2: Griffith-Hughes commented that the rule should include a more detailed definition of what constitutes premises under the control of a license or permit holder.

Response 2: The commission considered this during the rule drafting phase and determined that such a provision would fail to capture all the potential fact scenarios to which the rule may apply, some of which cannot be known at this time because they are the subjects of future applications. Instead, the individual location and factual scenario must be considered for a fair evaluation. The commission elected to refer to the existing statutory definition, which maintains the status quo. No changes were made to the rule in response to this comment.

The rule is adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code and Government Code §2001.039, which requires review of each commission rule at least every four years.

Current §35.32 is repealed simultaneously with the publication of the adoption of this new rule. The adopted new rule does not otherwise impact any other current rules or statutes.

§35.1. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §§11.61(b)(21), 22.12, 24.11, 25.04(b), 26.03(b), 28.11, 32.24, 61.71(a)(30), 69.13, and 71.09.

(b) Except as provided in this subsection, a licensee or permittee shall report to the commission a breach of the peace on a licensed premises as defined by §11.49 of the Code. The licensee or permittee shall make the report as soon as possible, but not later than five calendar days after the incident. If the incident is a shooting, stabbing or murder, or an incident involving serious bodily injury, the licensee or permittee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

(1) in person at any commission office;

(2) through the commission's website;

(3) by e-mail to breachofpeace@tabc.texas.gov; or

(4) through the commission's internet-based reporting system.

(d) The executive director or the executive director's designee may require, in writing, that a licensee or permittee make any reports required by this section in a specific manner as instructed, if the licensee or permittee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(30).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

(1) the date and time of the report;

(2) the date and time of the incident being reported;

(3) the trade name of the licensed premises where the incident occurred;

(4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;

(5) the name of the person filing the report, that person's relationship to the holder of the license or permit, and contact information for that person;

(6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the license or permit to answer questions from the commission about the incident, that person's relationship to the license or permit holder, and contact information for that person;

(7) a brief description of the incident;

(8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and

(9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises or premises under the control of a license or permit holder, or when a disturbance is created by a person on the licensed premises or on premises under the control of a license or permit holder and the incident involves:

(1) shooting, stabbing or murdering a person;

(2) causing bodily injury to another person;

(3) threatening another person with a weapon;

(4) discharging a firearm on the licensed premises; or

(5) destroying the licensee's or permittee's property, if the incident is reported by the licensee or permittee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious

bodily injury) creates a "disturbance," and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the licensee or permittee, or any person allowed by the licensee or permittee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance," and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A license or permit holder may not be held administratively liable for failing to file a report or failing to file a timely report under this section if it can demonstrate that it had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

(i) A license or permit holder may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the alleged breach of the peace:

(1) did not occur on the license or permit holder's licensed premises; and

(2) occurred at a time that the license or permit holder's licensed premises was closed to the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §35.32

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §35.32 as part of the four-year cycle of review and revision of its rules prescribed by Government Code §2001.039 without changes as published in the November 4, 2022, *Texas Register* (47 TexReg 7386). The rule will not be republished.

The content of the repealed rule is incorporated into a new rule 35.1, adopted simultaneously with this repeal.

No public comments were received.

This repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeal does not impact any other current rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amendments to rules §§50.6, 50.7, 50.9 - 50.11, 50.21, 50.22, 50.24, and 50.25, relating to Alcoholic Beverage Seller Server Training, without changes to the text as published on December 2, 2022, in the *Texas Register* (47 TexReg 8014). The rules will not be republished. The amendments to §50.2, relating to Alcoholic Beverage Seller Server Training, is adopted with changes to the text as published on December 2, 2022, in the *Texas Register* (47 TexReg 8014) and will be republished.

The amendments result from review of chapter 50 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. The revisions add definitions of certain terms to address confusion among schools and students; remove a provision for unit-based instruction that no school has opted to use since the beginning of the program; remove obsolete technology references and ordering and issuing requirements for certificates; expand the categories of criminal offenses that the commission may consider to support a decision not to process a school's application or a trainer's application for a new or renewal permit; update a reference to the course requirements for issuance of a renewal certificate to a school or trainer; and provide a 30-day limit for late application renewals.

No formal public comments were received.

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

16 TAC §50.2

The amended rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rules do not impact any other current rules or statutes.

§50.2. Definitions.

Words used in this chapter have their common and ordinary meaning unless they are given a specific meaning in the code or are defined in this section.

(1) Applicant--An individual and/or each owner, officer, director, manager, or trainer of a legal entity who applies to the commission for a certificate under this chapter.

(2) Branch Seller Server School Certificate.

(A) Branch Classroom-Based Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Seller Server School Certificate granting the same authority as the Primary Certificate but at a site that is designated on the Branch Certificate and that is different from that designated on the Primary Certificate;

(B) Branch Mobile Application Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to be completed through the internet or through the mobile application, provided that all testing must be completed through the internet and that tests may not be stored on the mobile device or in the mobile application; or

(C) Branch Internet-Based Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to have an alternate domain location on the internet, provided that all course content and testing must be completed online.

(3) Break--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) Classroom-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate.

(5) Commission-Approved Personal Identification Number--A social security number, an individual taxpayer identification number (ITIN), or an alien registration number ("A" number).

(6) Comprehension question--A question designed to establish the Student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

(7) Course of instruction--The mandatory curriculum and the optional curriculum used to teach a seller server certificate course.

(8) Incomplete application--An application that fails to include all facts, disclosures, documents, statements, authorizations, signatures, and fees required by this chapter or requested by the commission for issuance of a certificate.

(9) In-House Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school sponsored or operated by a retail permittee or licensee and that has authority under this chapter to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

(10) Internet-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school offering an interactive course on a delivery platform with web-based functionality that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate.

(11) Mandatory Curriculum--The curriculum provided by the commission that must be used by a certified school teaching a seller server certificate course.

(12) Multimedia component--A technique (such as combining of sound, video, and text) in which several media are employed, including, but not limited to sound and audio recording, videos, and animation.

(13) Optional Curriculum--Any curriculum not provided by the commission that is used by a school to teach a seller server certificate course.

(14) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver license number, address, date of birth, or other similar information that is unique to the student.

(15) Primary Seller Server School Certificate--A certificate issued by the commission under this chapter granting authority to:

(A) offer instruction and maintain records at the school's principal site designated on the primary certificate; and

(B) issue seller server certificates.

(16) School--The holder of a Primary or Branch Seller Server School Certificate issued by the commission.

(17) Seller Server Certificate--A certificate issued to an individual who completes a course of instruction offered by a school and who passes the Commission Standard Competence Test.

(18) Seller Server Certificate Course--A class providing instruction in the sale, service, dispensing, delivery, and consumption of alcoholic beverages to or by persons in private clubs, minors or intoxicated persons, and that is designed to enable students to pass the Commission Standard Competence Test and receive a seller server certificate.

(19) Student--An individual who is participating in or has completed a Seller Server Certificate Course.

(20) Trainer--An individual who holds a Seller Server Trainer Certificate issued under this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

16 TAC §50.6, §50.7

The amended rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rules do not impact any other current rules or statutes.

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SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS

16 TAC §§50.9 - 50.11, 50.21, 50.22, 50.24

The amended rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rules do not impact any other current rules or statutes.

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SUBCHAPTER D. SELLER SERVER TRAINER CERTIFICATE

16 TAC §50.25

The amended rules are adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rules do not impact any other current rules or statutes.

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER D. APPROVAL PROCESS FOR NEW ASSOCIATE DEGREES

19 TAC §§2.50 - 2.58, 2.70 - 2.74

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter D, Approval Process for New Associate Degrees, §2.50 - 2.58 and 2.70 - 2.74, with changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (17 TexReg 7512). The rules will be republished.

This new subchapter continues the Coordinating Board's ongoing project to revise program approval processes in rule. Previously, the agency revised its processes for approving new professional, doctoral, master's, and bachelor's degrees, as well as academic certificates, establishing a new chapter (Chapter 2) for these processes. This rule packet extends to cover academic associate degrees, which are associate degrees intended

to prepare graduates for study at the bachelor's degree level by adding a new dedicated subchapter (Subchapter D) in Chapter 2. Readers of this adopted subchapter may need to cross-reference with sections of Chapter 2, including sections on requesting modifications and amendments, degree program phase-out, and program reviews.

This subchapter will become effective for academic associate degree proposals with required Planning Notifications submitted on or after June 1, 2023, with the exception of embedded associate degrees, which will take effect immediately upon adoption of the rule. The Coordinating Board will later repeal the existing, superseded rules in 19 Texas Administrative Code Chapter 9.

Texas Education Code (TEC) §61.051 states that the Coordinating Board must coordinate the efficient and effective use of higher education resources, avoiding unnecessary duplication. TEC §61.0512 further states that a public institution of higher education may not offer a new degree or certificate program without Coordinating Board approval. TEC §130.001 grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. TEC §130.0104 requires each public junior college district to establish a multidisciplinary studies associate degree, and authorizes the Coordinating Board to adopt rules as necessary. TEC §61.05151 requires that the number of semester credit hours required for the associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

Rule 2.50, Purpose, sets out the purpose of the subchapter, which is to establish a process for public institutions to request approval of a new associate degree program.

Rule 2.51, Authority, lists the sections of the TEC that grant the Coordinating Board the authority to approve associate degree programs, to regulate public junior colleges, to establish a multidisciplinary studies associate degree, and other relevant provisions.

Rule 2.52, Submission of Planning Notification, provides the information required for institutions to submit Planning Notifications to the Board, giving early notice that they intend to submit an associate degree proposal. This provision aligns the Coordinating Board rules to TEC §61.0512(b), which requires each institution to notify the Board before submitting a proposed new degree program. In addition, this provision will allow the Coordinating Board staff to anticipate proposals and manage staff workload.

Rule 2.53, Academic Associate Degree Titles, Length, and Program Content, lists the permissible types of academic associate degrees, and the content of each type of associate degree. This section closely parallels the language in existing rules under 19 Texas Administrative Code §9.183, simply reorganizing that information to fit within the new framework.

Rule 2.54, Approval Required for Academic Associate Degrees, outlines the various approval levels required for the academic associate degrees. Subsection 2.54(a) describes how most public two-year institutions can request an academic associate degree, which generally has an Assistant Commissioner approval endpoint (see 19 Texas Administrative Code §2.4 in the new Chapter 2 for an explanation of approval endpoints). Special provisions relating to permitting Texas State Technical College (TSTC)-Harlingen to offer the associate of science degree connect to TEC §135.51, which permits only this TSTC campus to offer any academic associate degree. Subsection 2.54(b) describes how public institutions can seek approval for the embedded academic associate degree within the bachelor's degree.

Rule 2.55, Presentation of Requests and Steps for Implementation for Academic Associate Degrees, sets out the steps an institution must follow to request a new academic associate degree, as well as how staff should process a proposal for a new program. This new process brings the approvals for academic associate degrees in line with the revised approval processes for other types of degrees contained in the new Chapter 2 rules.

Rule 2.56, Criteria for the Academic Associate Degrees, lists the proposed standards for academic associate degrees to meet with approval. These criteria are closely connected to the statutory criteria for program approval in TEC §61.0512(c), and also has a great degree of continuity with existing academic associate degree program criteria as stipulated in 19 Texas Administrative Code §9.184 of current Coordinating Board rules.

Rule 2.57, Multidisciplinary Studies Associate Degree, contains the requirements for the multidisciplinary studies associate degree, which all institutions must offer under law. TEC §130.0104 requires each public junior college district to establish a multidisciplinary studies associate degree, and confers on the Coordinating Board the authority to enact rules to institute this degree. The proposed rules closely follow the current version of 19 Texas Administrative Code Chapter 9, Subchapter L, which is where the rules related to the multidisciplinary studies associate degree currently live, reorganized to fit within the framework of the newly established Chapter 2. Rule

2.58, Embedded Credential: Academic Associate Degrees, is a new provision enabling any public institution to offer an embedded associate degree in the same, related, or supporting field as the bachelor's degree in which a student is enrolled. With nearly 4 million Texans having some college credit but no credential or degree, this provision is designed to be an off-ramp for students who have completed enough credit hours for an associate degree but need to pause their baccalaureate education. This provision is structured within the permissible boundaries of the law, which does not restrict the types of institutions that may offer the associate degree. In addition, it aligns with the coordinating board's authority to implement its strategic plan Building a Talent Strong Texas, to promote Texans' degree attainment by the year 2030.

Rules 2.59-2.69 are reserved. Coordinating Board intent is to establish new rules that will govern applied associate degrees at a later point in the ongoing program approval rule revision initiative.

Rule 2.70, Approval and Semester Credit Hours, requires institutions to provide a compelling academic reason for a proposed associate degree (either applied or academic) requiring more than 60 semester credit hours to complete. This rule implements TEC §61.05151, which requires that associate degrees not exceed the institutional accreditor's minimum number of hours in the absence of a compelling academic reason provided by the institution.

Rule 2.71, Post-Approval Program Reviews, states that Coordinating Board staff will conduct post-implementation reviews in accordance with Subchapter I of the new Chapter 2. This process is significantly similar to current post-implementation review processes.

Rule 2.72, Revisions to Approved Associate Degree Programs, states that an institution may require a revision or modification in line with Chapter 2, Subchapter A, §2.7. This provision brings associate degrees in line with the other degree programs, and provides for a more specific, clear, and predictable understanding of how institutions may request changes to their programs.

Rule 2.73, Phasing Out an Associate Degree Program, states that an institution wishing to phase out a program approved under this chapter may follow the process set forth in Chapter 2, Subchapter H. This provision brings the phase-out provisions for the associate degree programs in line with the phase-out provisions for other types of degree programs and provides new clarity for institutions wishing to update their Program Inventories.

Rule 2.74, Effective Date of Rules, states that rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023; for embedded credentials, the rules take effect immediately.

The following comment(s) were received regarding the adoption of the new rules.

Comment: One comment was received recommending that embedded associate degrees require Assistant Commissioner approval instead of notification only approval.

Response: Given the concerns raised during the comment period, the Coordinating Board agrees that a higher level of approval (Assistant Commissioner - Expedited) is appropriate in order to thoroughly evaluate whether requests for embedded associate degrees are truly embedded in bachelor's degree programs. Rule §2.54(b) is amended as "Approval of a proposed embedded associate degree program is subject to the Assistant Commissioner Expedited Review approval process under 19 TAC §2.4(2)(B)(ii)" and Rule §2.58(2) is amended as "may request the embedded associate degree program subject to Assistant Commissioner Expedited Review under subchapter A, §2.4(2)(B)(ii), of this chapter."

Comment: Two comments received requested a formal definition of an embedded associate degree.

Response: The new rules recently adopted by the Board define an embedded credential in §2.3(19) as "A course of study enabling a student to earn a credential that is wholly embedded within a degree program." This requires that any embedded credential, including an embedded associate degree, be comprised of coursework/content that exists within a proposed or existing degree program. The Coordinating Board commits to providing additional guidance during the rule implementation.

Comment: One comment received asked for clarity regarding the definition of "same, related, or supporting CIP code" of embedded associate degrees.

Response: Based on the definition of an embedded credential, institutions will have the flexibility to determine the appropriate CIP code for each embedded associate, as long as the coursework and content for the degree is wholly embedded in an existing bachelor's degree program. While no amendments are proposed to this section, given the requirements to align with the embedded credential definition, the Coordinating Board amends rule §2.58(2) by removing language that the institutions must have an existing bachelor's degree in the same CIP code as the proposed degree as follows "may request the embedded associate degree program subject to Assistant Commissioner Expedited Review under subchapter A, §2.4(2)(B)(ii), of this chapter."

Comment: One comment received requested clarification or a definition of students who are "unconditionally currently enrolled".

Response: Given the feedback received and the intent of an embedded associate degree to be primarily an offramp for students who have or need to stop out, the Coordinating Board amends rule §2.58 for clarity and transparency in the following way "A public two-year institution, a public university, or a public health-related institution may offer an academic associate degree as an embedded credential in the same, a related, or supporting field as the bachelor's degree in which a student is currently or has been enrolled." Institutions should follow their existing policies on issues like academic probation and conditional enrollment when deciding whether to award an embedded associate degree to a student.

Comment: Three comments were received from different institutions recommending the creation of additional limitations to institutional and student eligibility for awarding embedded associate degrees.

Response: In the development of the rules for the embedded associate degrees, the Coordinating Board took a student-centric approach by focusing on increasing the number of students who are eligible to receive a higher education credential. While the Coordinating Board acknowledges concerns expressed about which institution is eligible to award the degree, given the existing limitations on the embedded associate degree and proposed higher level of approval, no additional criteria for awarding are proposed. Institutions, especially those with existing partnerships, are still able to collaboratively develop policies for determining whether students are awarded an associate degree through the embedded model, reverse transfer, or another mechanism. The Coordinating Board commits to providing guidance and transparent approval processes for embedded associate degree requests during the implementation phase.

Comment: One comment received noted that four-year degree curricula often have the Core Curriculum distributed over four years instead of primarily in the first two years and inquired whether students would need to be core complete to be awarded an embedded associate degree.

Response: The Coordinating Board agrees the addition of an exception to the core completion requirement for an embedded associate degree is appropriate. However, institutions must follow their accreditation requirements for required core curriculum credit hours in an associate degree. This exception does not include an embedded associate degree in the Multidisciplinary CIP code since multidisciplinary degrees are required by statute to include the full core curriculum. Rule §2.53(b) is amended to include "(4) An institution may offer an embedded associate degree as outlined in §2.58 of this subchapter that does not include the full 42 SCH required core curriculum except for a Multidisciplinary studies degree as required by §2.57(b) of this subchapter."

Comment: Two institutions commented that the embedded associate degree needs to allow flexibility in the course requirements beyond the core curriculum.

Response: Institutions will have flexibility to determine which disciplines are appropriate to offer embedded associate degrees. There is no expectation from the agency that institutions create an embedded associate for all disciplines and all bachelor's degrees. However, the embedded associate must meet the requirement of being *wholly embedded* as is indicated in the defi-

nition of an embedded credential. The Coordinating Board commits to providing additional guidance during the rule implementation.

Comment: Two comments received from an institution inquired whether the embedded associate degrees would need to be evaluated as stand-alone degree programs, and whether they would apply to the low-producing programs policies.

Response: The Coordinating Board does not intend to require separate evaluation of embedded associate degrees or include them in the low-producing programs audits. The Coordinating Board encourages institutions to conduct their own qualitative and quantitative assessments to support the development and management of embedded associate degrees.

Comment: One institution and the Texas Association of Community Colleges commented that allowing universities to award an embedded associate degree may lead to the universities offering terminal associate degrees that would have otherwise been awarded by a Texas public junior college either prior to transferring to the university or awarded through reverse transfer. The comments also recommended that there be additional resources and incentives to support reverse transfer.

Response: The Coordinating Board agrees that there is value in reverse transfer and that allowing universities to award an embedded associate degree is intended to be another mechanism to support student success. The Coordinating Board is committed to exploring how to further support reverse transfer since this is not currently widely utilized by institutions. The agency will review possible options to further the data sharing necessary to allow for more reverse transfer opportunities for students. Both of these efforts, reverse transfer and embedded associates at universities, are intended to support more students completing a credential of value and the agency will continue to work with our institutional partners to achieve that goal.

Additional substantive amendments were made for the purpose of clarity and reducing duplicative criteria.

Rule §2.53(a)(4) was amended to clarify that a student may also be awarded an AAT degree if they have completed an Education Field of study curriculum as defined in §4.32.

Rule §2.55(c) was amended to clarify that an institution does not need to submit a planning notification prior to submitting a request for an embedded associate degree.

Rule §2.56(b) was amended to remove duplicative criteria required for submission of a request for a new academic associate degree. These criteria are already required as defined in subchapter A, §2.5, of this chapter.

The new subchapter is adopted under Texas Education Code §61.0512, which states that a public institution of higher education may not offer a new degree or certificate program without board approval, and Texas Education Code §130.001, which grants the Coordinating Board the authority to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges.

The adopted new subchapter affects Texas Education Code §61.051, which states that the Coordinating Board must coordinate the efficient and effective use of higher education resources, avoiding unnecessary duplication; Texas Education Code §130.0104, which requires each public junior college district to establish a multidisciplinary studies associate degree, and authorizes the Coordinating Board to adopt rules as necessary; and Texas Education Code §61.05151, which requires that the number of semester credit hours required for the associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

§2.50. Purpose.

The purpose of this subchapter is to establish the process for institutions to request new associate degree programs from the Board.

§2.51. Authority.

The authority for this subchapter is Texas Education Code §§61.051 and 61.0512, which provide that no new degree or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Tex. Educ. Code §130.001 grants the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. Tex. Educ. Code §130.0104 requires each public junior college district to establish a multidisciplinary studies associate degree, and authorizes the Board to adopt rules as necessary. Tex. Educ. Code §61.05151 requires that the number of semester credit hours required for the associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

§2.52. Submission of Planning Notification.

An institution of higher education seeking approval to offer a degree program under this subchapter must submit a Planning Notification to Board Staff in accordance with subchapter C of this chapter prior to submitting an administratively complete request for a new associate degree proposal. This requirement does not apply to a proposed associate degree submitted pursuant to §§2.57 and 2.58 of this subchapter.

§2.53. Academic Associate Degree Titles, Length, and Program Content.

(a) An academic associate degree may be called an associate of arts (AA), an associate of science (AS), or an associate of arts in teaching (AAT) degree.

(1) The AA is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both AA and AS degrees, the degree programs may be differentiated in one of two ways, including:

(A) The AA program may have additional requirements in the liberal arts and/or the AS may have additional requirements in disciplines such as science, mathematics, or computer science; or

(B) The AA program may serve as a foundation for the Bachelor of Arts (BA) degree and the AS for the Bachelor of Science (BS) degree.

(3) Each academic associate degree must provide a clearly articulated curriculum that can be associated with a discipline or field of study leading to a baccalaureate degree, and must be identified as such in the institution's Program Inventory.

(4) The AAT is a specialized academic associate degree program designed to transfer in its entirety to a baccalaureate program that leads to initial Texas teacher certification. This title should only be used for an associate degree program that consists of a Board-approved AAT curriculum. or an Education Field of Study curriculum as defined in §4.32 of this title (relating to Field of Study Curricula).

(b) Except as provided in paragraphs (1), (2), (3) and (4) of this subsection, academic associate degree programs must incorporate

the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 SCH).

(1) An institution may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 60 SCH.

(2) An institution may offer a specialized academic associate degree that incorporates a voluntary statewide transfer compact and a portion of the college's approved core curriculum if the coursework for both would total more than 60 SCH.

(3) An institution that has a signed articulation agreement with a Public University to transfer a specified curriculum may offer a specialized AA or AS (but not AAT) degree program that incorporates that curriculum.

(4) An institution may offer an embedded associate degree as outlined in §2.58 of this subchapter that does not include the full 42 SCH required core curriculum except for a Multidisciplinary studies degree as required by §2.57(b) of this subchapter.

§2.54. Approval Required for Academic Associate Degrees.

(a) This rule outlines how public junior colleges, Texas State Technical College - Harlingen, and Lamar State Colleges may request approval for a new academic associate degree. Proposed programs are subject to Assistant Commissioner approval under subchapter A, §2.4(2), and in accordance with the applicable provisions under subchapter A and this subchapter, except as specifically provided by this rule.

(1) General--A proposed academic associate degree is subject to Assistant Commissioner approval under 19 TAC §2.4(2), and in accordance with the applicable provisions under subchapter A and this subchapter.

(2) TSTC Harlingen may offer the associate of science degree in accordance with the provisions of Texas Education Code §135.51(b)(1-2).

(A) Such program is subject to Assistant Commissioner approval under subsection 2.4(2), and in accordance with the applicable provisions under subchapter A and this subchapter.

(B) An associate of science degree program offered by TSTC-Harlingen shall not unnecessarily duplicate existing programs offered in the service areas of Del Mar College, South Texas College, or Texas Southmost College.

(b) Embedded--an institution of higher education may offer an associate degree as an embedded credential to a student enrolled in an approved baccalaureate degree program. Approval of a proposed embedded associate degree program is subject to the Assistant Commissioner Expedited Review approval process under 19 TAC §2.4(2)(B)(ii). The institution may request approval for the academic associate degree:

(1) as part of the application for the baccalaureate program; or

(2) under the provisions of this section.

§2.55. Presentation of Requests and Steps for Implementation for Academic Associate Degrees.

(a) Except as provided by §2.54(b) of this subchapter, a requesting institution must submit a Planning Notification in accordance with subchapter C of this chapter.

(b) A requesting institution must submit an application to offer a new academic associate degree using the forms available on the Board's website.

(c) Except for programs submitted under §2.54(b) of this subchapter, not later than the sixtieth day after an institution submits an administratively complete application for approval, Board Staff shall provide informal notice and opportunity for comment to other institutions of higher education in the local community in accordance with 19 TAC §2.7, relating to Informal Notice and Comment on Proposed Local Programs.

(d) The institution must demonstrate that the proposed program obtained institution and governing board approval prior to submission.

(e) Board Staff will make the determination of administrative completeness in accordance with subchapter A, §2.6 of this chapter.

(f) The Assistant Commissioner, Commissioner, or Board, as applicable, shall approve or deny the proposed program within the timelines specified in subchapter A, §2.4, of this chapter, after receipt of the complete program proposal. If the Assistant Commissioner, Commissioner, or Board does not act to approve or deny the proposal within one year of administrative completeness, the program is considered approved.

(g) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with official Board approval.

§2.56. Criteria for Academic Associate Degrees.

(a) All proposed associate degree programs must meet the criteria set out in this subchapter, in addition to the general criteria in subchapter A, §2.5 of this chapter.

(b) Board staff shall ensure that each institution certifies and provides required evidence that a proposed academic associate degree meets the criteria in subchapter A, §2.5, of this chapter and the following criteria in its proposal request.

(1) If the program does not follow a Board-approved field of study curriculum or a Board-approved statewide articulation transfer curriculum, the institution has or will initiate a process to establish transfer of credit articulation agreements for the program with senior-level institutions.

(c) The institution shall certify that the proposed program complies with all applicable provisions contained in divisions of this subchapter and subchapter A.

§2.57. Multidisciplinary Studies Associate Degree.

(a) Tex. Educ. Code §130.0104 requires the governing boards of each public junior college district to establish a multidisciplinary studies associate degree. This statute allows the Coordinating Board to adopt rules putting this provision into effect.

(b) A multidisciplinary studies associate degree program is a Coordinating Board-approved associate of arts or associate of science degree composed of the college's core curriculum and enough additional courses to equal 60 semester credit hours (SCH). The SCH beyond the core curriculum must be selected by the student, in consultation with an academic advisor, and transfer to a specific field of study or major at a university of the student's choice.

(c) A multidisciplinary studies associate degree program established at a public junior college under this section must require a student to successfully complete:

(1) The public junior college's core curriculum adopted under Tex. Educ. Code §61.822, as defined by 19 TAC §4.28, relating to Transfer of Credit, Core Curriculum, and Field of Study Curricula; and

(2) The completion of courses selected by the student in the student's completed degree plan, accounting for all remaining credit hours required for the completion of the degree program.

(d) The multidisciplinary studies associate degree program must emphasize the student's transition to a particular four-year college or university that the student chooses and prepare the student for the intended field of study or major at the four-year college or university.

(e) A student enrolled in a multidisciplinary studies associate degree program shall file a degree plan as prescribed by 19 TAC Chapter 4, Subchapter T. The student must meet with an academic advisor to complete a degree plan as required by Tex. Educ. Code §51.9685(a)(1) that:

(1) Accounts for all remaining credit hours required for the completion of the degree program;

(2) Emphasizes the student's transition to a particular four-year college or university that the student chooses; and

(3) Prepares for the student's intended field of study or major at the four-year college or university.

§2.58. Embedded Credential: Academic Associate Degrees.

A public two-year institution, a public university, or a public health-related institution may offer an academic associate degree as an embedded credential in the same, a related, or supporting field as the bachelor's degree in which a student is currently or has been enrolled. The institution may request approval for the associate degree:

(1) In the application for the bachelor's degree program; or

(2) May request the embedded associate degree program subject to Assistant Commissioner Expedited Review under subchapter A, §2.4(2)(B)(ii), of this chapter.

§2.70. Approval and Semester Credit Hours.

An associate degree is limited to 60 SCH unless the institution determines that there is a compelling academic reason for requiring completion of additional semester credit hours for the degree (Tex. Educ. Code §61.05151). If the minimum number of semester credit hours required to complete a proposed associate program exceeds 60, the institution must provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-semester credit hour limit. Board Staff will review the documentation provided and make a determination to approve or deny a request to exceed the 60-semester credit hour limit.

§2.71. Post-Approval Program Reviews.

Board Staff shall conduct post-approval reviews in accordance with subchapter I of this chapter.

§2.72. Revisions to Approved Associate Degree Programs.

An institution may request a revision or modification to an approved associate degree under subchapter A, §2.7 of this chapter.

§2.73. Phasing Out an Associate Degree Program.

An institution may request to phase out an associate degree program under subchapter H of this chapter.

§2.74. Effective Date of Rules.

Rules §§2.50-2.57 and 2.70-2.73 under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023. Rule §2.58 takes immediate effect.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2023.

TRD-202300318
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: November 11, 2022
For further information, please call: (512) 427-6182

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter A, §4.10, Common Admission Application Forms, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6746). The rules will not be republished.

The adopted amendment lists elements necessary for determining admission to a general academic teaching institution, public community college, public state college, and public technical institute. This includes (1) biographical information including gender, ethnicity, and date of birth; (2) educational information including coursework, extracurriculars, community and volunteer service, and awards/honors; (3) residency, and (4) certification of information. The adopted amendment also allows the Coordinating Board to enter into a contract with a public institution of higher education or other vendor to maintain the electronic application system.

The adopted change aligns with the agency's authority under Texas Education Code (TEC), Section 51.762, which provides the Coordinating Board with the authority to adopt a common printed or electronic admission application form for use by a person seeking admission to general academic teaching institutions, junior college districts, public state colleges, and public technical institutes and require each institution collect information regarding gender, ethnicity, and date of birth as part of the application process. Additionally, the statute provides the Coordinating Board with the authority to contract with an institution of higher education or other provider to make the common admission application available electronically. This increases the vendor options to provide a high-quality, secure, user-friendly admissions portal.

The Coordinating Board convened a negotiated rulemaking committee comprised of higher education institutional representatives in accordance with TEC, Section 61.0331, which directs the Coordinating Board to employ the negotiated rulemaking process described in Chapter 2008 of the Texas Government Code when adopting a policy, procedure or rule relating to a uniform admission policy under Section 51.807. The negotiated rulemaking committee met once on August 5, 2022, to develop the proposed rules.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 51.762, which provides the Coordinating Board with the authority to adopt a common printed or electronic admission application form for use by a person seeking admission to general academic teaching institutions, junior college districts, public state colleges, and public technical institutes and require each institution collect information regarding gender, ethnicity, and date of birth as part of the application process. Additionally, the statute provides the Coordinating Board with the authority to contract with an institution of higher education or other provider to make the common admission application available electronically.

The adopted amendment affects Texas Education Code, Sections 51.762 and 61.07762 and rules in Title 19, Texas Administrative Code, Chapter 1, Subchapter G.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Nichole Bunker-Henderson
General Counsel
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For further information, please call: (512) 427-6585

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.32

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter B, Transfer of Credit, Core Curriculum and Field of Study Curricula, §4.32, without changes to the proposed text as published in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7517). The rule will not be republished.

The adopted amendment supports the implementation of the Texas Transfer Framework's Field of Study Curriculum work by allowing a total of twenty (20) semester credit hours (SCH) total for Discipline Foundational Courses and Directed Electives. Due to some disciplines having 4 SCH courses which are typically in science-based courses, it is not possible to meet the 6 SCH requirement for Directed Electives in existing rule. The adopted amendment in §4.32 increases the current Field of Study Curriculum from eighteen (18) SCH to twenty (20) SCH to provide more flexibility in the SCH required for Directed Electives.

No comments were received regarding the adoption of amendment.

The amendment is adopted under Texas Education Code, §61.823, which provides the Coordinating Board with the authority to develop and approve Field of Study Curricula for certain fields of study/academic disciplines.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §4.32.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter C, Texas Success Initiative, §4.54, without changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6748). The rules will not be republished.

The adopted amendment codifies the updated college readiness benchmarks for the ACT assessment administered on or after February 15, 2023. These benchmarks are used by entering undergraduates to qualify for an exemption under the requirements of the Texas Success Initiative (TSI) provided in Texas Education Code (TEC), Section F-1, 51.331 (et seq.).

In order to provide the most current standards for students to qualify for an exemption under the requirements of the TSI, the Coordinating Board periodically updates the benchmarks students use to qualify for a TSI exemption. This adopted amendment outlines updated benchmarks for the ACT, one of the assessments undergraduate students use to demonstrate readiness to enroll in entry-level college courses without support or with concurrent support, as required under TSI. Specifically, §4.54(a)(1)(A)(ii) adds the revised college readiness benchmarks effective on or after February 15, 2023. In alignment with assessment benchmarks outlined in §4.54(a)(1)(B), (C), and (D), these benchmarks are based on the assessment vendor's analysis of current student data and the likelihood of earning an A, B, or C in an entry-level college course in the subject areas of mathematics and English/reading. Section 4.54(a)(1)(A)(iii) adds information regarding the use of assessment score results

based on clauses (i) and (ii), allowable since the assessment was not revised.

The Coordinating Board determined that the revised benchmarks are necessary to reflect the most current student data available in determining college readiness in meeting the requirements of the TSI.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules as necessary to implement this subchapter.

The adopted amendment affects allowable exemptions under the Texas Success Initiative.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Nichole Bunker-Henderson
General Counsel
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For further information, please call: (512) 427-6262

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.12

The Board adopts amendments to §221.12, relating to Scope of Practice, with changes to the proposed text published in the August 19, 2022, edition of the *Texas Register* (47 TexReg 4936). The rule will be republished.

Changes to the Adopted Text. The Board received two written comments on the proposal. The comments were considered by the Board at its January 2023 meeting. In response to the written comments on the published proposal, the Board has made changes to subsections (b) and (c) of the rule text as adopted. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the changes are intended to address the written comments received.

Reasoned Justification. At its regularly scheduled October 2021 Board meeting, the Board charged the Advanced Practice Nursing Advisory Committee (APNAC) with reviewing and making recommendations for amendments to §221.12, regarding the scope of practice of advanced practice registered nurses (APRNs). The Board issued this charge to the Committee based upon an increased number of questions and complaints from the public regarding certain procedures and patient care activities being performed by APRNs.

The APNAC convened on March 3, 2022, and June 13, 2022, to consider the Board's charge. The Board originally considered the APNAC's recommendations for amendments to §221.12 at its July 2022, regularly scheduled Board meeting and voted to publish the proposed amendments in the *Texas Register* for public comment. The proposal was published in the *Texas Register* on August 19, 2022, and the comment period ended on September 19, 2022. The Board received two written comments on the proposal. The Board did not receive any requests for a public hearing.

Both of the written comments received were from organizations primarily representing physicians. No organizations representing nurses submitted written comments on the proposal. On January 5, 2023, the APNAC re-convened to review the submitted written comments and provide recommendations to the Board regarding whether the proposed rule should be modified in light of the comments received. At its January 2023 regularly scheduled meeting, the Board reviewed the APNAC's comments and recommendations and decided to make some changes to the text of the rule as adopted in response to the comments received.

Overview of Adopted Changes

Although the Board has responded to the specific written comments provided by the commenters in the "Summary of Comments and Agency Response" section of this adoption order, the Board re-iterates that the adopted rule is intended to assist practitioners and the public in understanding the limits of a practitioner's scope of practice in light of the constantly evolving standard of care. The standard of care, by its very nature, is not stagnant; it requires constant adaptation as innovations are made in healthcare. As such, practitioners may need to practice in new settings, perform new procedures, and develop new skills during their professional careers. The key point in understanding the purpose of the adopted rule is understanding the difference between expanding one's knowledge and skill set *within* one's individual scope of practice and expanding one's knowledge and skill set *outside* of one's professional scope of practice. While the former is permissible under the adopted rule, the latter is not.

To this end, the Board has modified some of the rule text as adopted in subsection (b) to clarify the difference between an APRN's professional scope of practice, which applies to all APRNs licensed in the same role and population focus area, and an APRN's individual scope of practice. As adopted, subsection (b) provides that APRNs may only perform those functions that are within their Board authorized professional and individual scopes of practice for their role and population focus areas. The Board also amended subsection (c) as adopted to clarify that the Board will review the specified factors when determining an APRN's professional and individual scope of practice to ensure that the action performed by the APRN falls within the limitations of both. The Board has provided additional explanation regarding an APRN's professional and individual scope of practice in the "Summary of Comments and Agency Response" section of this adoption order.

The Board has also made another change to subsection (b) of the rule text as adopted in response to recommended language from one of the commenters. As adopted, in addition to ensuring a function is within the APRN's professional and individual scope of practice, subsection (b) clarifies that an APRN may only perform functions that are consistent with the Nursing Practice Act, Board rules, and other applicable laws and regulations affecting their practice in Texas. The remainder of the rule text as adopted is unchanged from the proposal.

How the Section Will Function.

The amendments are necessary to clarify the professional and individual scope of practice for APRNs. Adopted §221.12(a) provides that an APRN may, within his/her authorized role and population focus area, provide a broad range of health care services to patients in a variety of practice settings.

Adopted §221.12(b) establishes the foundational premise that APRNs may only perform those functions that are within their Board authorized professional and individual scopes of practice for their role and population focus area and that are consistent with the Nursing Practice Act, Board rules, and other applicable laws and regulations affecting their practice in Texas. The remainder of the adopted rule describes how the Board will determine whether a particular action performed by an APRN is within the APRN's professional and individual scope of practice.

Adopted §221.12(c) lists the factors the Board will consider when determining whether a particular action falls within an APRN's authorized professional and individual scope of practice. The Board recognizes that not all of the factors specified in the subsection will necessarily apply in every case, and the Board will only evaluate the factors that are applicable in an instant case.

Adopted §221.12(c)(1) requires an analysis of whether the APRN received training regarding the performance of the particular action in his/her advanced educational program. While the Nursing Practice Act (NPA) authorizes advanced nursing practice in a specific role based upon the completion of an advanced practice nursing education program, it does not define the professional scope of practice for APRNs. The professional scope of advanced nursing practice is derived from an APRN's advanced practice nursing education program, the certifying body that issued the individual certification required for the APRN's initial licensure in a role and population focus area, and the professional specialty organization guidance that addresses advanced practice nursing in the APRN's specified role and population focus area after licensure. To that end, under adopted §221.12(c)(2), the Board will also consider whether the action falls within generally acceptable standards of care appropriate for the APRN's role and population focus area, as determined by a professional specialty organization. Specialty organizations often offer specialty specific continuing education, role-related competencies, and educational conferences that are intended to enhance nursing practice, keep pace with changing practice environments, and encourage evidence-based practice in specialty roles. The consideration of these factors is foundational in determining an APRN's professional scope of practice.

When determining an APRN's individual scope of practice, the Board will consider whether an APRN has demonstrable clinical competence and/or clinical experience in performing an action in the role of an APRN, as obtained through supervision and/or training by a qualified practitioner. The Board recognizes that APRNs will often obtain new skills by observing, and then demonstrating, the skill to a supervisor or peer. Adopted §221.12(c)(3) provides flexibility to practitioners regarding the kind of training that an APRN may complete in order to demonstrate clinical competence in a new skill or activity.

Under adopted §221.12(c)(4), the Board will also consider whether an APRN has been credentialed by a health care facility's credentialing body and/or holds a privilege to perform the action at a health care facility. Because credentialing is intended to ensure that patients receive the highest level of care, healthcare professionals who undergo facility credentialing are generally subjected to stringent scrutiny of their qualifications and competencies. This deliberate vetting process would be considered by the Board when determining if the APRN's performance of a certain activity falls within the APRN's individual scope of practice.

Adopted §221.12(c)(5) specifies additional factors the Board will consider when reviewing any additional training obtained by an APRN. As a threshold matter, the training must include education obtained by the APRN post-APRN licensure. Second, the training must be in, or consistent with, the APRN's authorized role and population focus area. Finally, there must be a method of objective, verifiable participant competency following completion of the training. The Board will also consider a variety of factors to determine if the training is adequate for the specific action being performed by the APRN. Again, the Board recognizes that not all of the factors will necessarily be present in a particular case. The Board will, therefore, consider only those factors that are present in the matter under consideration.

Those factors include the type of instruction provided, such as online instruction, in-person instruction, didactic instruction, or clinical instruction; the learning objectives, content, materials, and methods for evaluating participation contained in the training curriculum; the length and/or quantity of the training; the qualifications of the person/entity providing the training; whether the training has been certified or recognized by a professional specialty organization for the APRN's role and population focus area; whether the training is consistent with evidence-based practice; whether the training is sponsored by an educational institution, such as a formal fellowship or precepted experience; and whether the training is provided by an entity in conjunction with the use of the entity's product, drug, or medical apparatus/equipment. Because the Board recognizes that additional education may be obtained in a variety of ways, the adopted factors are not intended to be overly prescriptive or limiting in nature. Instead, the training must only be sufficient to ensure safe and competent patient care.

Adopted §221.12(d) makes it clear that it is the responsibility of the APRN to maintain records of all completed training and competencies. While the records may be maintained in any format and medium, they should be appropriately detailed and organized to demonstrate the sufficiency of the training and/or competency completed by the APRN. The manner in which they are maintained, however, may be determined by each individual APRN and will not be prescribed by the Board.

Adopted §221.12(e) and (f) are necessary to ensure that the intent of the entire section is not misconstrued. First, in order to be licensed as an APRN in Texas, an individual must first hold licensure as a registered nurse. Therefore, because an APRN is also a registered nurse, an APRN may continue to practice in the role of a registered nurse. The adopted rule does not require an APRN to practice in an advanced practice role only, nor does the rule prevent an APRN from practicing in a registered nurse role. It remains the choice of the licensed individual as to which role he/she practices in at any given time.

Second, the adopted rule should not be construed in a manner that would authorize an APRN to practice in a role or population focus area for which the APRN has not been licensed. The adopted amendments do not in any way expand an APRN's scope of practice to extend into new roles or population focus areas. The adopted amendments only clarify an APRN's professional and individual scope of practice for his/her existing licensure level only.

Finally, adopted §221.12(g) reminds licensees of the importance of ensuring that all patient care activities are performed in conformity with their respective scopes of practice. If an APRN is unsure if a particular action falls within his/her professional and individual scope of practice, the adopted amendments are intended to provide additional clarity as to the factors that should be reviewed and considered before performing the activity or action. Performing a procedure or patient care activity outside of an APRN's scope of practice may subject the APRN to disciplinary action by the Board.

Summary of Comments and Agency Response.

Preamble and §221.12(c)

Comment: A commenter representing the Texas Medical Association states that, unless the Board provides further clarification in the rule that the NPA is the basic framework for the scope of practice for APRNs, the commenter is concerned that the rule may inappropriately expand the scope of practice and increase confusion in this area. Further, the commenter states that training, education, experience, professional specialty guidance, and hospital credentialing may be important to determining if an APRN is qualified to perform a service, but only in the context of whether the NPA first provides that service is part of their licensure at all.

Regarding proposed §221.12(c) specifically, the commenter further states that the proposed factors in proposed subsection (c) create ambiguity for APRNs about what controls their scope of practice. The commenter further suggests combining proposed subsections (b) and (c) and adding the phrase "the Board will first determine if the action is allowed under the applicable laws and regulations affecting the APRN's practice in Texas, including the NPA. If so, the Board will then consider" to the combined subsection.

Agency Response to Comments: The Board declines to make the commenter's specific changes but agrees some additional clarification in the rule text as adopted is necessary. The NPA authorizes advanced nursing practice in a specific role based upon the completion of an advanced practice nursing education program. However, just as the Medical Practice Act does not do so for physicians, the NPA does not define the professional scope of practice for APRNs. The professional scope of advanced nursing practice is derived from three sources: an advanced practice nursing education program; the certifying body that issues individual certification required for APRN licensure in a role and population focus area; and professional specialty organization guidance that addresses advanced practice nursing in a specified role and population focus area. The professional scope of practice derived from these sources applies equally to all APRNS in a specified role and population focus area. An APRN cannot practice outside of the established professional scope of practice for a role and population focus area, and the proposed rule does not purport to permit an APRN to do so.

However, advanced nursing practice is dynamic and necessarily requires an APRN to engage in a life-long learning process. The standard of care, by its very nature, is not stagnant; it requires constant adaption as advancements are made. As such, practitioners are expected to adapt their practice as the standard of care evolves in order to provide evidence-based, patient-centered care within their authorized scope of practice. This will necessarily require APRNs to practice in new settings, perform new procedures, and develop new skills during their professional careers.

As such, an APRN may expand his/her *individual* scope of practice so long as it does not extend beyond the professional scope of practice for the APRN's role and population focus area. An APRN's individual scope of practice is based upon the mastered competencies of the individual and will necessarily vary from one practitioner to another depending upon the opportunities and professional experiences each individual has had in his/her education program, clinical experiences, and practice setting. The review of an APRN's individualized training, credentialing, and demonstrable clinical competencies/experiences is necessary to determine the APRN's *individual* scope of practice. While an APRN is permitted to expand his/her individual scope of practice, the proposed rule limits such expansion to the confines of the established professional scope of practice for the APRN's role and population focus area. The proposed rule simultaneously ensures that the APRN has also obtained the necessary competencies to perform the new skill(s) within the standard of care.

For example, while inserting an intrauterine device (IUD) may be within the professional scope of practice for a women's health nurse practitioner in his/her role, a particular practitioner may never have inserted a specific type of IUD in his/her practice. As such, before doing so, the APRN would need to acquire additional training sufficient for the APRN to demonstrate a mastered competency in inserting the specific device. If the APRN was able to obtain such training and demonstrate competency and mastery of the skill, the individual would have appropriately expanded his/her individual scope of practice under the proposed rule. However, the converse is not true. No matter how much additional training a pediatric nurse practitioner obtains, he/she could not treat an adult patient for the management of high blood pressure because the professional scope of practice for a pediatric nurse practitioner is limited to the treatment of pediatric patients. This is true even if a physician is willing to delegate such a task to the practitioner.

The Board declines to make the commenter's specific changes to §221.12(c) as adopted. An APRN must practice within both his/her professional scope of practice, as well as his/her individual scope of practice, at all times. The Board finds that the specified factors in proposed subsection (c) appropriately apply to the evaluation of both an APRN's *professional* scope of practice, as well as the APRN's *individual* scope of practice for any given situation. The evaluation of both is needed to ensure safe practice and patient safety. However, to clarify the effect of the proposed rule in this regard, the Board has made changes to §221.12(b) and §221.12(c) as adopted to reflect the evaluation of both professional and individual scopes of practice.

§221.12(b)

Comment: A commenter representing the Texas Medical Association suggests that the word "applicable" be added between the words "other" and "laws" in proposed subsection (b). The commenter also recommends that the phrase "in Texas" be added to the end of proposed subsection (b). The commenter states these changes are needed to account for the state and federal laws that apply to an APRN's practice and to avoid a potential misapplication of the proposed rules in a manner that violates Texas' scope of licensure laws.

Agency Response to Comment: The Board agrees and has made the commenter's suggested changes in the rule text as adopted.

§221.12(c)

Comment: A commenter representing the Texas Pain Society recommends adding the phrase "in his/her advanced educational program" to the end of proposed (c)(3). The commenter states that the term "qualified" is too vague to be enforceable and the recommended phrase is necessary to ensure the APRN has been supervised by someone in that field of specialty.

Comment: A commenter representing the Texas Pain Society states that the training referenced in proposed (c)(5)(A) should be required by a qualified practitioner in his/her educational program rather than by a supervising physician and that training should be for no less than one year. The commenter recommends adding the phrase "in his/her advanced educational program" to the end of proposed (c)(5)(A)(i) and "one year being the minimum length of training required" and "in his/her advanced educational program" to proposed (c)(5)(A)(ii).

Agency Response to Comment: The Board declines to make either of the commenter's suggested changes. While the Board shares the commenter's concern that additional training and/or precepted experiences are sufficient to ensure competency, the Board declines to place unnecessary restrictions on the kinds of training and precepted experiences that an APRN may participate in. The Board finds the demonstration of competency to be a better measure, particularly when the mastery of one skill may be accomplished satisfactorily within a shorter period of time, while the mastery of another skill may take considerably longer. Because it would be impractical and unreasonable to impose a one-size-fits-all time requirement, the Board finds it preferable to also evaluate the quality of the training and/or precepted experience, as well as the demonstration of the mastery of the skill in lieu of an artificially prescribed timeframe. Further, the length of the training is already included as a factor for evaluation in proposed subsection (c)(5)(A)(iii). So, although a prescribed minimum time frame is not included in the rule, the specific length associated with a particular training would be considered. Further, the qualifications of the person providing training, as well as the content and structure of the training, are also factors for evaluation already included in proposed subsection (c)(5)(A)(i) and (iv). Finally, a variety of practitioners, not only those practicing in the same field of specialty as the APRN, may be qualified and appropriate to provide instruction/training and test the clinical competency of the APRN. Because APRNs are not currently required, via either statute or rule, to be supervised by a delegating physician in the same specialty, the Board finds the commenter's suggestion in this regard to be unduly restrictive. Further, the proposal already requires an evaluation of the credentials of instructors to ensure appropriate instruction and demonstration of competency.

§221.12(g)

Comment: A commenter representing the Texas Medical Association objects to the word "may" in proposed subsection (g). The commenter states that an APRN acting outside the professional's scope of practice should face disciplinary consequences, although the level of discipline may vary based on the factors underlying the situation. The commenter recommends changing "may" to "shall" in proposed subsection (g).

A commenter representing the Texas Pain Society suggests putting more teeth into the rule by changing "may" to "will" in proposed subsection (g).

Agency Response to Comment: The Board declines to make the commenters' suggested changes. The Board has authority to investigate violations of the NPA and Board rules, to include violations associated with practicing outside of one's authorized scope of practice. If such violations are found, they can subject the licensee to discipline. However, the commenters' suggested language seeks to impose an absolute duty to impose discipline in such situations. While the likelihood is that discipline would be imposed in any given scenario substantiating such a violation, the Board retains discretion to resolve contested cases in a variety of ways under the NPA, including through corrective actions, which are not disciplinary in nature, and through alternative dispute resolution. Further, the primary purpose of proposed subsection (g) is to emphasize to licensees the importance of evaluating their own practice to ensure compliance with the rule and to remind licensees that the Board will evaluate their practice in accordance with the rule if a complaint is received. The Board does not find it necessary to change the proposed subsection in order to retain its ability to impose discipline when appropriate.

Miscellaneous

Comment: A commenter representing the Texas Medical Association suggests using consistent, well-defined terms to provide communication to licensees and states that the terms "population focus area", "specialty area", and "new roles" are confusing. The commenter also suggests referencing Rule 221.13 as one of the factors the Board considers when determining if an APRN was acting within appropriate scope of licensure. The commenter further states that there are no reasonable limitations on what type of professional specialty organization or educational institution the standards of care or training may come from and suggests including additional qualifications on these terms to prevent a licensee from using a sham specialty organization or educational institution to verify the licensee's actions/training/education.

Agency Response to Comment: The Board declines to make changes to the rule in response to the commenter's comments. While the Board recognizes that there may be some attempts to create sham specialty organizations or educational institutions, the Board finds that the proposal ensures a sufficiently rigorous review of the additional education and/or training proffered by an APRN to justify the performance of a particular action. Further, while the terms "population focus area", "specialty", and "roles" are specific to APRN practice, the Board does not find their use in the proposed rule confusing. Further, these terms are used throughout the Board's rules regarding advanced nursing practice and are specifically defined in Board Rule 221.2 *(relating to APRN Titles and Abbreviations).* The Board does not find additional clarification in the rule necessary. Finally, the Board does not find it necessary to specifically reference Board Rule 221.13 in this proposal for that rule to remain valid and enforceable, and to the extent applicable, relevant to a determination of scope of practice in a given situation. However, because Rule 221.13 relates primarily to the core standards of practice for APRNs, and includes topics other than those specifically addressed by the proposal, the Board finds that its addition to this proposal could cause unnecessary confusion.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: Texas Medical Association; Texas Pain Society.

For, with changes: None.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151, which permits the

Board to regulate the practice of professional nursing and vocational nursing; establish standards of professional conduct for licensees; and determine whether an act constitutes the practice of professional nursing or vocational nursing. Further, the Occupations Code §301.002(2) includes activities of advanced nursing practice in the definition of professional nursing, and §301.152 authorizes the Board to license APRNs; establishes the roles of APRNs; and authorizes advanced nursing practice based upon completion of an advanced practice nursing education program.

§221.12. Scope of Practice.

(a) Advanced practice registered nurses (APRNs) practice in a variety of settings and provide a broad range of health care services to a variety of patient populations within their Board authorized role and population focus area.

(b) APRNs may only perform those functions that are within their Board authorized professional and individual scopes of practice for their role and population focus area and that are consistent with the Nursing Practice Act, Board rules, and other applicable laws and regulations affecting their practice in Texas.

(c) In determining whether a particular action falls within an APRN's authorized professional and/or individual scope of practice, the following factors will be considered:

(1) Whether the APRN received training regarding the performance of the particular action in his/her advanced educational program;

(2) Whether the action falls within generally acceptable standards of care appropriate for the APRN's role and population focus area, as determined by a professional specialty organization;

(3) Whether the APRN has demonstrable clinical competence and/or clinical experience in performing the action in the role of an APRN, obtained through supervision and/or training by a qualified practitioner;

(4) Whether the APRN has been credentialed by a health care facility's credentialing body and/or holds a privilege to perform the action at a health care facility;

(5) Whether the APRN has completed additional training for the specific action being performed. Additional training means education obtained by the APRN post-APRN licensure in his/her role and population focus area that is adequate for the action being performed by the APRN.

(A) To determine whether the additional training obtained by an APRN is adequate for the action being performed by the APRN, the following factors will be considered:

(i) the type of instruction provided, by way of example, and not limitation, online instruction; in-person instruction; didactic instruction; or clinical instruction;

(ii) the learning objectives, content, materials, and methods for evaluating participation contained in the training curriculum;

(iii) the length and/or quantity of the training;

(iv) the qualifications of the person/entity providing the training;

(v) whether the training has been certified or recognized by a professional specialty organization for the APRN's role and population focus area;

(vi) whether the training is consistent with evidence-based practice;

(vii) whether the training is sponsored by an educational institution, such as a formal fellowship or precepted experience; and

(viii) whether the training is provided by an entity in conjunction with the use of the entity's product, drug, or medical apparatus/equipment.

(B) All training must include a method of objective, verifiable participant competency following completion of the training.

(d) It is the responsibility of the APRN to maintain records of all completed training and competencies.

(e) An APRN is not prohibited from providing nursing care within the scope of practice of a registered nurse.

(f) Nothing in this section shall be construed to authorize an APRN to practice in a role or population focus area for which the APRN has not been licensed.

(g) An action that is determined to have been committed outside an APRN's authorized scope of practice may subject the APRN to discipline.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2023.

TRD-202300313
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: February 14, 2023
Proposal publication date: August 19, 2022
For further information, please call: (512) 305-6822

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.1

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 277, §277.1 - Complaint Procedures. The Board adopts this rule with changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7641). The amended rule will be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The main focus of the amendments were to update the agency's complaint process to make it more efficient and effective for both the complainant and the respondent.

The final amended rule: 1. Requires the Board to consider §279.1 - Contact Lens Examination and §279.3 - Spectacle Examination when determining basic competency, 2. Specifies that if the optometrist or therapeutic optometrist fails to complete all

the of required findings in an initial examination at which a prescription for corrective lenses is written, the completed report of investigation shall be classified as a complaint, 3. Outlines the purpose of the rule, 4. Clarifies complaints that must be received on the Board's official complaint form and information that must be included in a complaint - adding a provision to specify if the service was related to an in-person or telehealth visit, 5. Clarifies how jurisdictional complaints are handled by Board staff including specifying glaucoma complaints will be handled as outlined in §277.13 and §277.14, 6. Clarifies the creation the Investigation-Enforcement Committee including deleting the geographic regions, 7. Clarifies the duties of the Investigation-Enforcement Committee on determining whether or not a violation has occurred, and 8. Makes non-substantive capitalization changes to ensure consistency across the Board's rules.

COMMENTS

The 30-day comment period ended on December 18, 2022. During this period, the Board received comments regarding the proposed rules from three commenters, including the Texas Ophthalmological Association, the Texas Medical Association, and the TX400. A summary of comments relating to the rules and the Board's responses follows.

COMMENT: Regarding §277.1(c), one commenter asks the Board to add an exception for "glaucoma related complaints" to the second sentence of subsection (c) and to add a new subsection that ensures all glaucoma related complaints are handled pursuant to §277.13.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Regarding §277.1(d)(1), one commenter asks the Board to add a new subsection to ensure all glaucoma related complainants are handled pursuant to §277.13 and not transferred to the Investigation-Enforcement Committee.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Regarding §277.1(e)(1), one commenter asks the Board to add language to ensure all glaucoma related complaints are handled pursuant to §277.13 and §277.14.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Two commenters asks the Board to add a new subsection to the rule to ensure all glaucoma related complaints are handled pursuant to §277.13 and §277.14.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Regarding §277.1(c)(2), one commenter asks the Board to add language a new subsection to ensure that all glaucoma related complaints are handled pursuant to §277.13 and §277.14.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Regarding §277.1(c)(2), one commenter seeks clarification on how complaints alleging conduct by an unlicensed person engaging in the practice of optometry or therapeutic optometry would be handled, noting the proposed language states a complaint is jurisdictional if it alleges conduct by a Board licensee.

RESPONSE: The Board agrees with the comment that complaints could be jurisdictional even if they allege conduct by an unlicensed person. The Board will remove the language "by a Board licensee" from the rule as adopted.

COMMENT: Regarding §277.1(e)(2) and (e)(3), one commenter asks the Board to add language to ensure all glaucoma related complaints are handled pursuant to §277.13 and §277.14

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

COMMENT: Regarding §277.1, one commenter asks that the Board to withdraw the proposed amendment in its entirety as it undermines the language and intent of SB 993.

RESPONSE: The Board does not agree that §277.1 supersedes the process established in §277.13 and §277.14. Instead, the Board will remove proposed subsection (d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority and instead adds a new subsection (d)(3) outlining that glaucoma complaints shall be investigated pursuant to §277.13 and §277.14.

CHANGES TO TEXT AS PROPOSED

The Board updated §277.1(c)(2) to remove the language "by a Board licensee" so that the proposal now reads: "A complaint is jurisdictional if it alleges conduct that, if true, would constitute a violation of the Act or Board rules."

The Board removed proposed subsection §277.1(d)(1)(D) "complaints related to the treatment of glaucoma" from the list of complaints considered a high priority thereby reverting the rule to the language in the original rule.

The Board added a new subsection §277.1(d)(3) that requires complaints related to glaucoma be investigated pursuant to the process outlined by §277.13 and §277.14.

The Board made a minor edit to §277.1(d)(2)(C) to correct an error in the original published text of the rule (the word "no" to "not") so it now reads: "do not potentially threaten the public health..."

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code, Subchapter E. Public Interest Information and Complaint Procedures.

§277.1. Complaint Procedures.

(a) Purpose. Pursuant to §351.205 of the Act, the Board is authorized to adopt rules relating to the investigation of complaints filed with the Board.

(b) Complaints. Complaints shall be submitted on the official complaint form. The Board shall protect the identity of a complainant in the investigative process to the extent possible. Complaints shall contain the following information:

(1) the name and contact information of the complainant (and patient);

(2) the name and contact information of the person the complaint is filed against;

(3) the date, time, and place of occurrence of alleged violation of the Act or Board rules;

(4) the type of service (in-person or telehealth);

(5) the complete description of incident giving rise to the complaint; and

(6) the express authorization to release patient records to the Board where applicable.

(c) Classification of Complaints. All complaints received shall be sent to the Executive Director. The Board shall determine jurisdiction and distinguish between categories of complaints as follows:

(1) Non-jurisdictional. A complaint is non-jurisdictional if the Board does not have any authority over the subject of the complaint. If possible, these complaints shall be referred to an agency having jurisdiction over the complaint.

(2) Jurisdictional. A complaint is jurisdictional if it alleges conduct that, if true, would constitute a violation of the Act or Board rules. A jurisdictional complaint may require a Board investigation including but not limited to a Board member expert review and/or contractual third-party expert review. The Board shall further classify these complaints according to the schedule in subsection (d) of this section. These complaints shall be processed according to subsection (e) of this section.

(d) Classification of Jurisdictional Complaints. All jurisdictional complaints shall be classified in one of the following categories:

(1) Complaints of high priority. This includes, but is not limited to, complaints alleging:

(A) professional misconduct,

(B) qualifications of applicants or licensees,

(C) unauthorized practice;

(D) other acts or the failure to act that potentially threatens the public health, and

(E) a violation of the professional standard of care. The processing of these complaints shall have priority over normal priority complaints. The Board shall evaluate complaints of high priority to determine whether an emergency temporary suspension shall be sought under §277.8 of this title.

(2) Complaints of normal priority. This includes, but is not limited to, complaints alleging:

(A) advertising violations,

(B) violations of the Act or Board Rules resulting in economic harm, and

(C) violations of the Act regarding notice that do not potentially threaten the public health.

(3) Glaucoma. All complaints received relating to glaucoma shall be considered high-priority and shall be investigated pursuant to the process outlined by §277.13 and §277.14.

(e) Investigation-Enforcement Committee.

(1) Makeup of Committee. The Chair shall appoint a committee to consider all jurisdictional complaints referred from Board staff. The committee shall be known as the Investigation-Enforcement Committee and shall be composed of board members who are licensed optometrists or therapeutic optometrists.

(2) Authority of Committee. The Committee shall have the power to make recommendations regarding resolution and disposition of specific cases such as those regarding professional competency or recommendations regarding dismissals of complaints and closure or investigations. The Committee may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction. In addition to subpoena power, each member of the committee may authorize the Executive Director to investigate an alleged violation.

(3) Disposition of Complaint. During the investigation of a filed jurisdictional complaint related to professional competency, members of the Committee may determine:

(A) whether a violation of the Act or Board rules has occurred;

(B) whether to dismiss the matter and take no further action;

(C) whether to conduct further investigations;

(D) whether to forward to the Board the Committee's determination that a violation of the Act may have occurred together with a recommendation that the Board issue a remedial plan;

(E) whether to forward to the Board the Committee's determination that a violation of the Act may have occurred together with a recommendation that proceedings be instituted with the State Office of Administrative Hearings to consider disciplinary action, sanctions, administrative penalties, issuance of cease and desist orders, or refusal to issue a license;

(F) whether to forward to the Board the Committee's determination that some person, firm, or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the members' recommendation that the board notify

the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law; and

(G) whether to forward to the Executive Director the Committee's determination of findings applicable to subparagraphs (D) and (E) of this paragraph to issue a remedial plan or for assessment of administrative penalties.

(f) Complaints Investigated by Staff. Board staff may investigate jurisdictional complaints that do not directly relate to patient care and the investigation or disposition of which do not require expertise in optometry or therapeutic optometry. During the investigation, Board staff may consult members of the Investigation-Enforcement Committee to assist with the investigation. A complaint shall be directed to the Investigation-Enforcement Committee if the Executive Director determines that the complaint should not be dismissed or settled or the Executive Director is unable to reach an agreed settlement.

(g) Notification and Request for Information. Once an investigation commences, Board staff shall notify the subject of the complaint and request a written response to the allegations along with patient charts and any other relevant information. The subject of the complaint shall have 14 days from the receipt of the Board's request to respond pursuant to §273.16 of this title. The Executive Director may extend the time period upon a showing of good cause by the subject of the complaint.

(h) Dismissal and Tracking of Complaints. A complaint shall not be dismissed without appropriate consideration. The Board and complainant shall be advised of complaint dismissals. A complaint dismissed by the Executive Director shall be approved by the Board at a Board Meeting. The Executive Director shall make a report at each board meeting regarding complaints to the Board.

(i) Basic Competence Violations.

(1) If during the investigation of an optometrist's or therapeutic optometrist's compliance with Section 351.353 of the Act and §279.1 or §279.3 of this title, the optometrist or therapeutic optometrist failed to complete all the of required findings in an initial examination at which a prescription for corrective lenses is written, the completed investigation report will be classified as a complaint and forwarded by the Executive Director to the Investigation-Enforcement Committee.

(2) In determining the action to take under subsection (e)(3), if any, the Investigation-Enforcement Committee shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the Board concerning similar complaints. Omission of four or more basic competency findings requires the committee members to conduct an informal conference.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

TRD-202300265
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 18, 2022
For further information, please call: (512) 305-8500

22 TAC §277.2

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 277, §277.2, Disciplinary Proceedings. The Board adopts this rule with one minor editing change to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7644). The amended rule will be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The final amended rule: 1. outlines the specific language that must be included on the notice when entering a default judgment under the rule "FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT" and 2. makes non-substantive capitalization changes to ensure consistency across the Board's rules.

COMMENTS

The 30-day comment period ended on December 18, 2022. During this period, the Board did not receive any comments regarding the proposed rule.

CHANGES TO TEXT AS PROPOSED

The Board made a minor edit to §277.2(b)(1) to correct an error in the published text of the rule that did not strike-though the non-capitalized reference to "board's legal counsel" to the capitalized "Board's legal counsel."

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code, Subchapter K. Disciplinary Procedures.

§277.2. Disciplinary Proceedings.

(a) General statement. In a contested case before the Board, proceedings shall be governed by the Administrative Procedure Act (APA), except as specifically provided in the Optometry Act. In any contested case, opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, refund of examination fees, remedial plan or dismissal.

(b) Informal disposition of contested case. Prior to the imposition of disciplinary sanctions, remedial plan, or administrative penalties against a respondent (a licensee or a person issued a cease and desist order), the respondent shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the APA.

(1) Informal conferences shall be attended by the Executive Director, the Board's legal counsel, the two members of the Investigation-Enforcement Committee, a public member, and other representatives of the Board as the Executive Director and legal counsel may deem necessary for the proper conduct of the conference. The respondent and/or the authorized representative may attend the informal conference and shall be provided an opportunity to be heard.

(2) In any case where charges are based upon information provided by a person who filed a complaint with the Board (complainant), the complainant may attend the informal conference, and

shall be provided with an opportunity to be heard. Nothing herein requires a complainant to attend an informal conference.

(3) Notice of the informal conference shall include:

(A) a statement of the legal authority, jurisdiction, and alleged conduct under which the enforcement action is based, with a reference to the particular section(s) of the statutes and rules involved;

(B) an offer for the respondent to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with Chapter 2001 of the Administrative Procedure Act;

(C) a statement that the respondent has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(D) the following statement in capital letters in 12 point boldface type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT. The notice shall be served by delivering a copy to the respondent or licensee in person, by courier receipted delivery, or by certified or registered mail, return receipt requested, to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference.

(4) The respondent shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the respondent chooses to respond in writing, the response shall admit or deny each of the allegations. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the respondent intends to rely for his or her defense. If the respondent fails to respond to the notice specified in this subsection, the matter will be considered as a default case and the respondent will be deemed to have:

(A) admitted all the factual allegations in the notice specified in this subsection;

(B) waived the opportunity to show compliance with the law;

(C) waived notice of a hearing;

(D) waived the opportunity for a hearing on the allegations; and

(E) waived objection to the recommended sanctions made at the informal conference.

(5) The Investigation-Enforcement Committee may recommend that the Board enter a default order, based upon the allegations set out in the notice specified in this subsection, adopting the recommended sanctions made at the informal conference. Upon consideration of the case, the Board may enter a default order under §2001.056 of the Administrative Procedure Act or direct that the case be set for a hearing at the State Office of Administrative Hearings.

(6) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice and upon proof of proper notice to the respondent's address of record as specified in paragraph (3) of this subsection.

(7) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in this subsection was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the notice specified in this subsection and the granting thereof will not result in delay or injury to the public or the Board.

(8) Informal conferences shall not be deemed to be meetings of the Board and no formal record of the proceedings at the conferences shall be made or maintained.

(9) The Investigation-Enforcement Committee shall consider the Penalty Schedule in §277.6 of this title to determine the parameters of any administrative fine or penalty to recommend to the respondent and the Board. The Investigation-Enforcement Committee may recommend a settlement to the respondent that includes an agreed order to refund all or part of the examination fee paid by the complainant to the respondent. This settlement must be approved by the Board pursuant to subsection (b)(10).

(10) Any proposed order shall be presented to the Board for its review. At the conclusion of its review, the Board shall approve, amend, or disapprove the proposed order. Should the Board approve the proposed order, the appropriate notation shall be made in the minutes of the Board and the proposed order shall be entered as an official action of the Board. Should the Board amend the proposed order, the Executive Director shall contact the respondent to seek concurrence. If the respondent does not concur, the provisions of the next sentence shall apply. Should the Board disapprove the proposed order, the case shall be rescheduled for purposes of reaching an agreed order or in the alternative forwarded to the State Office of Administrative Hearings for formal action.

(c) Formal disposition of a contested case. All contested cases not resolved by informal conference shall be referred to the State Office of Administrative Hearings.

(1) Notice. The respondent shall be entitled to reasonable notice of not less than 10 days. Notice shall include the matters specifically required by the APA, to wit:

(A) a statement of the time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is being held;

(C) a reference to the particular section of the Act and rules involved; and

(D) a short and plain statement of the matters asserted.

(2) Service of notice. The notice of hearing and a copy of the formal complaint shall be served on the respondent's last known address at least 10 days prior to the hearing. Service on the respondent shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent at the address shown on the respondent's annual renewal certificate.

(3) Filing of documents. All pleadings and motions relating to any contested case pending before the State Office of Administrative Hearings shall be filed with the State Office of Administrative Hearings. They shall be deemed filed only when actually received.

(4) Motion for continuance. Continuances may be granted by the State Office of Administrative Hearings in accordance with procedural rules established by that agency.

(5) Transcription. Proceedings, or any part of them, must be transcribed on the written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties.

(6) Discovery. Requests for the issuance of subpoenas, requests for depositions and for production of documents, and other discovery matters shall be governed by the APA.

(d) If, after receiving notice of hearing, a party fails to appear in person or by representative on the day and time set for hearing, the Administrative Law Judge may proceed in that party's absence and, as authorized by applicable law, may issue a proposal for decision or order against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

(e) Any default judgment entered under this section shall be issued only upon adequate proof that proper notice was provided to the defaulting party, and such notice includes disclosure, in 12 point, bold-faced type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT. Proper notice may be established by proof that the Board complied with subsection (c)(1) and (2) of this section.

(f) This section does not preclude the agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the agency's statute or rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

TRD-202300266
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 18, 2022
For further information, please call: (512) 305-8500

22 TAC §§277.3 - 277.6, 277.10 - 277.12

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 277, Practice and Procedure. The Board adopts these amendments with no changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7646). The rules will not be republished.

The specific rules being adopted with amendments include: §277.3 - Probation, §277.4 - Reinstatement, §277.5 - Convictions, §277.6 - Administrative Fines and Penalties, §277.10 - Remedial Plans, §277.11 - Submission to Mental or Physical Examination, and §277.12 - Denial of License and Disciplinary Action by Board.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 277 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The rules being adopted are non-substantive as follows: 1. change capitalization in order for the language across the entirety of Chapter 277 to be consistent; 2. in Rule 277.12, adds "or therapeutic optometry" in subsection (a)(1) when describing the "practice of optometry"; and 3. in §277.10(d) adds the word "the" to provide clarity.

COMMENTS

The 30-day comment period ended on December 18, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

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Janice McCoy
Executive Director
Texas Optometry Board
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Proposal publication date: November 18, 2022
For further information, please call: (512) 305-8500

CHAPTER 279. INTERPRETATIONS

22 TAC §279.2

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 279, §279.2 - Contact Lens Prescriptions. The Board adopts these amendments without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7845). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

The rule deletes the word "manually" when describing the signature on a prescription as many prescriptions are digitally written or transmitted. It deletes the section related to faxing prescriptions. It prohibits an optometrist or therapeutic optometrist from signing or causing to be signed an ophthalmic lens prescription without first personally examining the eyes for whom the prescription is made pursuant to Section 351.435 of the Optometry Act. It specifies that an optometrist or therapeutic optometrist is responsible for the prescriptions signed under the practitioner's name even if they are produced by non-clinical staff. And it requires a licensee to report to the Board within seven business days if the licensee discovers a prescription for lenses was issued without his knowledge or permission. Finally, it makes non-substantive capitalization changes to ensure consistency across the Board's rules

COMMENTS

The 30-day comment period ended on December 25, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.357.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

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Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 25, 2022
For further information, please call: (512) 305-8500

22 TAC §279.4

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 279, §279.4, Spectacle and Ophthalmic Devices Prescriptions. The Board adopts this rule without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7848). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The rule deletes the word "manually" when describing the signature on a prescription as many prescriptions are digitally written or transmitted. It deletes instructions related to faxing prescriptions.

COMMENTS

The 30-day comment period ended on December 25, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.356.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

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Janice McCoy
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

22 TAC §279.11, §279.12

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 279, Interpretations. The Board adopts these rules with no changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7849). The amended rules will not be republished.

The specific rules being adopted with amendments include: §279.11 - Relationship with Dispensing Optician - Books and Records and §279.12 - Relationship with Dispensing Optician - Separation of Offices.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. The adoption is non-substantive as follows: 1. changing the reference from "legislature" to "Texas Legislature" and "board" to "Board" and 2. §279.11 adds "or therapeutic optometry" in subsections (a) and (b) when describing the "practice of optometry."

COMMENTS

The 30-day comment period ended on December 25, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rules are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.459, and §351.460.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

TRD-202300272
Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 25, 2022
For further information, please call: (512) 305-8500

22 TAC §279.13

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 279, §279.13, Professional Responsibility for Off-Site Examinations: Improper Solicitation of Patients. The Board adopts this rule without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7850). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

Section 279.13 references §5.04(5) of Vernon's Civil Statutes - which was codified as §351.455 of the Texas Occupations Code in 1999. The Board has interpreted the statute to prohibit li-

censees from unsolicited house-to-house business and continues to support that prohibition. This rule updates the statutory reference and allows that follow-up care can be accomplished through telehealth services. Additionally, the rule title is updated to provide better clarity of the rule's content.

COMMENTS

The 30-day comment period ended on December 25, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.455.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

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Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 25, 2022
For further information, please call: (512) 305-8500

22 TAC §279.15

The Texas Optometry Board (Board) adopts amendments to 22 TAC Chapter 279, §279.15, Practice with Contagious or Infectious Disease. The Board adopts this rule without changes to the proposed text as published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7851). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039.

Section 279.15 references §5.08(a) of Vernon's Civil Statutes - which was codified as §351.454 of the Texas Occupations Code in 1999. The adoption updates the title to better reflect the rule's purpose of prohibiting practice when the licensee knowingly suffering from a contagious or infectious disease and it updates the reference to the current statutory authority.

COMMENTS

The 30-day comment period ended on December 25, 2022. During this period, the Board did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

This rule is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.454.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2023.

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Janice McCoy
Executive Director
Texas Optometry Board
Effective date: February 12, 2023
Proposal publication date: November 25, 2022
For further information, please call: (512) 305-8500

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §§363.2, 363.4 - 363.6, 363.8, 363.10 - 363.19, 363.24, 363.25, 363.27

The Texas State Board of Plumbing Examiners (Board) adopts the amendments to 22 Texas Administrative Code (TAC), Chapter 363, §§363.2, 363.4 - 363.6, 363.8, 363.10 - 363.19, 363.24, 363.25, and 363.27 which concern examination and registration. The rules are adopted without changes to the proposed text published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7212). These rules will not be republished.

REASONED JUSTIFICATION FOR THE RULES

The Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) was amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021. The adopted rules implement statutory changes made by HB 636 and Board efforts to improve regulation of the industry by simplifying the rules as part of its four-year rule review.

SECTION-BY-SECTION SUMMARY

The amendment to §363.2 simply adds that applicants for renewal (as well as original licensure, registration, or endorsement) must qualify by meeting the requirements, paying the fee, submitting fingerprint and exam passage, as is applicable. It further adds that fingerprints are subject to background check using records of the Federal Bureau of Investigations which is provided by statute.

The amendment to §363.4 strikes the provision in (b) as it is redundant as out-of-state applicants are already considered in subsection (a).

The amendment to §363.5 simplifies the rule by eliminating an unnecessary reference to (a)(2) which no longer exists. Other unnecessary rule references are eliminated to update the rule and simplify it. References to "Board-approval" for education instructors and providers are updated to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.6 simplifies the rule by eliminating an unnecessary rule reference and restructuring the rule to make it easier to read. References to "Board-approval" for courses and educational instructors and providers are updated to reflect the approval process for education implemented by HB 636. The ad-

ministrative approval of providers and instructors is now passed to the executive director. Lastly, successful completion in a high school career and technology education program as provided by 1301.3542, as implemented by HB 636, is added to exempt those applicants from requirements for earlier licensure, work experience, or instruction.

The amendment to §363.8 eliminates references to "Board-approval" for courses, educational instructors, and providers to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.10 eliminates a reference to "Board-approved" for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.11 eliminates a reference to "Board-approved" for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.12 eliminates a reference to "Board-approved" for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.13 eliminates a reference to "Board-approved" for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.14 eliminates a reference to "Board-approved" for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director.

The amendment to §363.15 eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

The amendment to §363.16 updates and simplifies examination by stating that the Board will not process incomplete applications and applicants shall receive notification of written or practical exam with the date, time, and place of exam.

The amendment to §363.17 replaces the term "Chief Examiner" with the term "agency" to reflect the operations of agency staff to service the needs of applicants reporting for examination.

The amendment to §363.18 simplifies the rule by eliminating an unnecessary rule reference. This allows the rules to stay current regardless of changes to the rules.

The amendment to §363.19 replaces the term "Chief Examiner" with the term "agency" to reflect the operations of agency staff to service the needs of applicants reporting for examination.

The amendment to §363.24 eliminates unnecessary rule references and the rule was restructured to simplify it. References to "˜Board-approved' for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director. It also adds "plumbing inspector" to the list of qualified licensees that may teach a CPE course. It allows endorsement education providers to maintain records of course completion for two years.

The amendment to §363.25 eliminates outdated and unnecessary rule references. The rule was restructured to simplify it and make it easier to read.

The amendment to §363.27 eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

SUMMARY OF COMMENTS

No comments were received regarding the proposed rules.

BOARD ACTION

At its meeting on January 18, 2023, the Board adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The rules are adopted under the authority of § 1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2023.

TRD-202300352
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: February 16, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 936-5216

22 TAC §363.3, §363.26

The Texas State Board of Plumbing Examiners (Board) in a duly noticed meeting on January 18, 2023, adopted the repeal of 22 Texas Administrative Code §363.3 relating to Qualification of Applicants with Military Experience; 22 Texas Administrative Code §363.26 relating to Training Program for Responsible Master Plumber Applicants. The repeals at 22 TAC §363.2 and §363.26 are adopted without changes to the proposed text published in the October 28, 2022 issue of the *Texas Register* (47 TexReg 7224). The repeals will not be republished.

REASONED JUSTIFICATION OF ADOPTED REPEALS

The adopted repeals implement change to Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) as amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021 and Board efforts to improve regulation of the industry by updating and simplifying the rules as part of its four-year rule review.

SECTION-BY-SECTION SUMMARY

The repeal of § 363.3 on qualifications for applicants with military experience eliminates an unnecessary rule as it was expanded upon and replaced by the earlier adoption of §365.22 which provides provisions for military veterans, spouses, and active military. The repeal of §363.26 eliminates the Responsible Master Plumber training program as the underlying statutory requirement was eliminated by HB 636.

SUMMARY OF PUBLIC COMMENTS

No comments were received on the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under the authority of § 1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law).

This repeal affects the Plumbing License Law. No other statute is affected.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2023.

TRD-202300349
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: February 16, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 936-5216

CHAPTER 367. ENFORCEMENT

22 TAC §§367.1 - 367.9, 367.11, 367.12, 367.14 - 367.21

The Texas State Board of Plumbing Examiners (Board or TSBPE) adopts amendments to existing rules at 22 Texas Administrative Code (TAC), Chapter 367, §§367.1 - 367.9, 367.11, 367.12, and 367.14 - 367.21, concerning enforcement. The amendments are adopted without change to the proposed text as published in the October 28th, 2022 issue of the *Texas Register* at 47 TexReg 7226. These rules will not be republished.

The adopted rule amendments implement changes to Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) as amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021 and Board efforts to improve regulation of the industry by simplifying the rules as part of its four-year rule review.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The Plumbing License Law was amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021. The adopted rule amendments implement statutory changes made by HB 636 and improves regulation of the industry by simplifying the rules making them easier to use and enforce.

SECTION-BY-SECTION SUMMARY

The amendment to §367.1 implements the Board's clarification that plumbing inspectors have authority to enforce the PLL and Board rules. The rule is further amended to show that municipalities and plumbing inspectors shall enforce the PLL, Board rules, and applicable municipal ordinances or bylaws and adopted codes as authorized by 1301.255, 1301.503, and 1301.551 of the PLL.

The amendment to §367.2 simplifies the rule by eliminating an unnecessary rule reference. This allows the rules to stay current regardless of changes to the rules.

The amendment to §367.3 adds the word "including" to (a)(5) which was inadvertently left out of earlier rule language and necessary to clarify subsection (5) as recommended by the rule work group. Finally, an unnecessary rule reference is eliminated. This allows the rules to stay current regardless of changes to the rules.

The amendment to §367.4 simplifies the rule by eliminating an unnecessary rule reference. This allows the rules to stay current regardless of changes to the rules.

The amendment to §367.5 simplifies the rule by eliminating an unnecessary rule reference. This allows the rules to stay current regardless of changes to the rules. Reference to the Responsible Master Plumber (RMP) training program that was eliminated by HB 636 is now eliminated from the rule.

The amendment to §367.6 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules. The word "including" is added to subsection (c) which was inadvertently left out of earlier rule language and is necessary to clarify subsection (c) as recommended by the rules work group.

The amendment to §367.7 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules.

The amendment to §367.8 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules.

The amendment to §367.9 simplifies the rule by eliminating an unnecessary references and language. This allows the rules to stay current regardless of changes to the law and rules and makes the rules easier to read and enforce.

The amendment to §367.11 simplifies and clarifies the existing rule by restating it to show that a political subdivision shall not employ or contract a person who is not licensed by the board as a plumbing inspector. The plumbing inspector must be affiliated with the political subdivision having jurisdiction.

The amendment to §367.12 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules.

The amendment to §367.14 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules.

The amendment to §367.15 simplifies the rule by eliminating unnecessary references. This allows the rules to stay current regardless of changes to the law and rules. It also eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

The amendment to §367.16 eliminates reference to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

The amendment to §367.17 eliminates reference to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee. Subsection (h) is also simplified to eliminate unnecessary language to clarify that the Board has the discretion to impose appropriate sanctions. The penalty matrix graphic at subsection 367.17(k) is updated to eliminate outdated rule references and add three more violations under Class A. The Class A violation added are:

Two Class A Violations are added for failure to cooperate with field investigations (Rules §367.15(d) and §367.12(b).) Section 367.15(d) requires licensee and registrants cooperate with the Board and its field representatives during the investigation of a complaint. Rule 367.12(b) requires a licensee or registrant cooperate with a field representative conducting an on-site license or registration check. These violations are recommended a $3,000 penalty.

A Class A Violation is recommended for a violation of the PLL 1301.551. Section 1301.551 of the statute requires a municipality or other political subdivision that requires a plumbing contractor to obtain a permit before the person performs the plumbing to accept permit applications, collect required fees, and issue the required permits by telephone, fax, or e-mail. This is recommended a $2,500 penalty.

The amendment to §367.18 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules. It also eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

The amendment to §367.19 eliminates reference to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee. It further eliminates Board review of applications submitted after revocation if staff has approved those applications. This allows the timely processing of applications.

The amendment to §367.20 simplifies the rule by eliminating an unnecessary reference. This allows the rules to stay current regardless of changes to the law and rules.

The amendment to §367.21 eliminates reference to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

SUMMARY OF PUBLIC COMMENTS

No comments were received regarding the proposed rules.

BOARD ACTION

At its meeting on January 18, 2023, the Board adopted the proposed rule amendments as published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are adopted under the authority of § 1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2023.

TRD-202300348
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: February 16, 2023
Proposal publication date: October 28, 2022
For further information, please call: (512) 936-5216

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. BROADBAND DEVELOPMENT
SUBCHAPTER B. BROADBAND DEVELOPMENT PROGRAM

34 TAC §§16.30 - 16.46

The Comptroller of Public Accounts adopts new §16.30, concerning definitions, §16.31, concerning notice of funds availability, §16.32, concerning federal funding; conflict with laws, rules, regulations, or guidance, §16.33, concerning designated area eligibility, §16.34, concerning designated area reclassification, §16.35, concerning program eligibility requirements, §16.36, concerning application process generally, §16.37, concerning overlapping applications or project areas, §16.38, concerning special rule for overlapping project areas in noncommercial applications, §16.39, concerning application requirements, §16.40, concerning evaluation criteria, §16.41, concerning application protest process, §16.42, concerning awards; grant agreement, §16.43, concerning reporting, §16.44, concerning records retention; audit, §16.45, concerning failure to perform, and §16.46, concerning forms; notices, with changes to the proposed text as published in the September 23, 2022, issue of the *Texas Register* (47 TexReg 6174). The rules will be republished. These new sections implement the Texas Broadband Development Office. The new sections will be located in Chapter 16 (Broadband Development), new Subchapter B (Broadband Development Program).

The new subchapter is to comply with Government Code, Chapter 490I, which was enacted by House Bill 5, 87th Legislature, R.S., 2021. Government Code, §490I.0109, permits the comptroller to adopt rules regarding the Texas Broadband Development Office as necessary to implement that chapter.

Section 16.30 provides definitions.

Section 16.31 provides that the office shall publish a notice of funds availability.

Section 16.32 establishes that the office may establish eligibility and program requirements and preferences and make award decisions in compliance with state or federal law, rule, regulation, or guidance applicable to the type of funding to the extent necessary to avoid a conflict between the relevant law, rule, regulation, or guidance and this subchapter.

Section 16.33 describes designated area eligibility requirements in compliance with state and federal law, rule, regulation and guidance.

Section 16.34 establishes the process for petitioning for designated area reclassification.

Section 16.35 describes program eligibility requirements.

Section 16.36 describes the application process.

Section 16.37 establishes criteria for overlapping project areas.

Section 16.38 establishes an application amendment process for applications from noncommercial broadband service providers that contain project areas that overlap with project areas in applications from commercial broadband service providers.

Section 16.39 establishes application requirements.

Section 16.40 establishes criteria the office shall use to evaluate applications and provides preferences the office may use to make award decisions.

Section 16.41 establishes an application protest process.

Section 16.42 provides award decisions will be made at the sole discretion of the office, requires awards to be used only for certain specified purposes, and establishes a timeline for grant recipients to negotiate and sign grant agreements.

Section 16.43 provides requirements for the submission of reports and documentation by a grant recipient.

Section 16.44 provides records retention requirements and describes requirements for providing records, documentation, or other information required by the office and authorizes the office, upon reasonable notice, to audit the activities of a grant recipient as necessary to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grant recipient has complied with the terms, conditions, and requirements of the grant.

Section 16.45 provides for forfeiture of grant funds in the event a grant recipient fails to perform under the grant agreement.

Section 16.46 permits the office to prescribe all forms or documents that may be required to implement this subchapter and permits the office to require that such forms be submitted electronically.

The comptroller received approximately 200 comments regarding adoption of the proposed rules from the following organizations, interest groups, and individuals: AMA-TechTel; AT&T; Brazos 2020 Vision ("Brazos"); Cherokee County Electric Cooperative Association ("CCECA"); City of Austin ("Austin"); City of Fort Worth ("Fort Worth"); Deep East Texas Council of Governments ("DETCOG"); EDS Tech, LLC ("EDS"); Frontier Southwest, Inc. ("Frontier"); Gigabit Fiber ("Gigabit"); Mr. Herb Krasner; Harris County Office of Broadband ("Harris County"); The Honorable Keith Wright, Angelina County; The Honorable Jim Lovell, Houston County; The Honorable Mark Allen, Jasper County; The Honorable Greg Sowell, Nacogdoches County; The Honorable Kenneth Weeks, Newton County; The Honorable Sydney Murphy, Polk County; The Honorable Daryl Melton, Sabine County; The Honorable Jeff Boyd, San Augustine County; The Honorable Fritz Faulkner, San Jacinto County; The Honorable Allison Harbison, Shelby County; The Honorable Doug Page, Trinity County; The Honorable Jacques Blanchette, Tyler County; Lit Communities; Nextlink; Office of the Public Utility Counsel ("OPUC"); Rise Broadband; Ms. Mari Robinson; SA Digital Connects; SOS Communications; Texas Association of Regional Councils ("TARC"); Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); Texas Forestry Association ("TFA"); Texas Rural Funders; Texas Telephone Association ("TTA"); Texoma Communications, LLC ("Texoma"); and, TLL Temple Foundation ("TLL").

The comptroller received programmatic comments not specifically related to the proposed rules from Brazos, EDS, and Texas Rural Funders. Brazos offered many comments aimed at ensuring that the needs of smaller communities and rural areas remain at the forefront of discussions as the office implements the broadband development program. Brazos highlighted the challenges that non-profit and governmental organizations in rural areas continue to face in expanding broadband to their constituents and offered suggestions of how the program could develop to help surmount those challenges. EDS noted that the proposed rules did not address digital equity development projects and raised the issue of workforce development and training. Texas Rural Funders provided comments regarding funding allocation and urging the office to explicitly encourage providers to work together to reach harder to serve areas. Although the comments are outside the scope of the current rulemaking, the comptroller thanks these commenters for their thoughtful comments that raise issues and concerns that merit further discussion and consideration as the program is implemented. Because these comments were not directly related to the proposed rules, the comptroller did not make any changes based on these comments.

The comptroller received many comments regarding the comptroller's proposed definitions in proposed §16.30. OPUC commented that it generally agreed with the proposed definitions. However, the comptroller also received several comments from Frontier, Lit Communities, SA Digital Connects, TARC and TCA urging the comptroller to consider changes to the proposed definitions.

Frontier suggested adding a definition for "Gbps" to the definitions. The comptroller disagrees with this comment because the term is not used in the rules. The comptroller therefore declines to make a change to the proposed rule based on this comment.

Lit Communities encouraged the comptroller to adopt a definition for "broadband technology" that is consistent with the language published in the State Broadband Plan. However, because the term is not used in the rules the comptroller declines to make a change to the proposed rule based on this comment.

Lit Communities also suggested that because the federal government may increase the threshold for broadband upload and download speeds, the comptroller should consider updating the definition of "underserved" such that it is tied to higher symmetrical speeds. SA Digital Connects also commented on this definition by noting that the current definition is confined to service speeds and does not consider adoption of broadband due to affordability or digital skills training issues. The comptroller is keenly aware that the issues of affordability and digital skills training can have a significant impact on the adoption of broadband and the limitation of the speed metrics defined by the federal government. The broadband development program is currently focused on expanding access and availability through access to federal funding and therefore must comply with their objective speed metrics. For these reasons, the comptroller cannot agree with these comments and adopts its definition of "underserved" which mirrors the current federal definition.

TARC suggested adding a definition for "political subdivision" due to a concern that the term would be overbroad and would potentially cause undue burden on the office as a result of the notice requirements of proposed §16.34. The comptroller agrees with this comment but does not believe a change to the definitions in the proposed rule is needed based on this comment because the comptroller is adopting changes to §16.34 that address this concern.

TCA commented that projects may be complex and encompass large areas so it recommended that the comptroller extend the "application protest period" definition to 45 days after an application is posted under proposed §16.36(d). The comptroller is statutorily required by Government Code, §490I.0106(e)-(f) to post on its website information from each accepted application for a period of at least 30 days and must accept from any interested party a written protest during the initial 30-day posting period. The comptroller adopts the proposed definition with changes to indicate that the application protest period is at least 30 days to mirror these statutory requirements.

TCA also commented that the definition of "project area" could cause confusion because it allows applicants to use different geographic units other than census blocks. Therefore, TCA recommended limiting project areas to designated census blocks that are identified as eligible for funding. The comptroller agrees with this comment and adopts the proposed rule with changes. The rule as adopted will provide greater clarity while defining a critical term as used in these rules.

Mr. Herb Krasner sought clarification regarding whether under the proposed rule an entire county could be designated as a project area and requested that the comptroller adopt language explicitly permitting a county to be designated as a project area. Because eligibility for funding is dependent on an area meeting statutory requirements related to the availability of broadband service, a project area may not contain an area that is ineligible for funding. Therefore, the comptroller declines to make changes to the proposed rule based on this comment because a county could contain designated areas that are not eligible for funding under Government Code, §490I.0105.

The comptroller received several comments regarding proposed §16.31, concerning notices of funds availability. OPUC supported the objective of this provision. CCECA, SA Digital Connects, and TEC supported the rule with changes, suggesting that the comptroller make mandatory certain notice requirements to ensure that applicants receive sufficient notice of funding opportunities. In addition, TEC recognized that the comptroller may wish to maintain flexibility as to location of posting and recommended that the date of notice issuance reflects the date published in the comptroller's preferred location. The comptroller agrees with commenters supporting changes that would make publication of a notice of funding availability mandatory, as well as changes that would require the notice of funding availability to contain certain elements. Therefore, the comptroller adopts §16.31 with changes to make publication of the notice of funds availability mandatory and to require the comptroller to provide certain information in a notice of funds availability. The rule as adopted will improve program transparency.

The comptroller also received a comment from TTA suggesting the comptroller provide for an express 90-day application review and submission window, noting that such a window would allow applicants sufficient time to prepare the application and work with the local community. The comptroller disagrees with the comment from TTA. The comptroller does not believe incorporating an express application window is needed because the rule as proposed requires the comptroller to specifically state the date by which an application must be submitted.

The comptroller received two comments regarding proposed §16.32, concerning federal funding. OPUC and TCA supported adoption of a rule allowing the comptroller to evaluate applications in a manner consistent with criteria required by federal law, regulation or guidance applicable to type of funding and to avoid conflict between state and federal law; however, TCA also urged the comptroller to adopt language that would restrict the comptroller from applying optional and discretionary items associated with applicable federal programs. The comptroller disagrees with this comment because it would restrict the comptroller's discretion to include and consider other factors when evaluating applications for funding as permitted under proposed §16.31 and §16.40. Consequently, the comptroller adopts this rule without changes.

The comptroller received many comments regarding the broadband development map and the eligibility requirements outlined in proposed §16.33. OPUC was supportive of the rule and specifically recognized that the rule made an allowance for alternatives in developing the state map that are intended to save time and lower costs.

TCA was supportive of proposed §16.33(a) setting the scope of designated areas at the census block level as providing greater granularity than setting designated areas at the project level. However, other commenters expressed concerns that the comptroller should provide for even greater granularity by requiring mapping at the household or serviceable location level. TLL and other commenters noted that provider-based maps have historically placed rural areas at a disadvantage to receive funding and recommended that the rules should ensure map accuracy to the household level. TFA expressed the concern that mapping at the census block level may not accurately capture whether an area is unserved due to population density and distribution within any given census block. Therefore, TFA recommended that mapping efforts should be more finite and provide more detail than the proposed census block level. Similarly, Lit Communities questioned whether the office has a plan for using geographic units smaller than census blocks. The City of Austin also commented on this issue noting that by designating the census block as the smallest unit of data available, the broadband development map would be misaligned with the Federal Communications Commission's ("FCC") national fabric map which will consist of USPS deliverable addresses. The City of Austin further noted the mismatch in designation could lead to a false understanding of the true broadband connectivity needs of the community - pointing out, for example, that similarly situated addresses on the same street could be treated disparately because of census block boundaries. Fort Worth and Harris County also expressed concern over using census blocks as designated areas because the requirement could potentially eliminate the opportunity to fund unserved and underserved locations in urban areas. Fort Worth noted that lack of access does not respect census boundaries and may arise at the neighborhood, street block, and even building level. The city asserted that adopting smaller project area boundaries especially where better data on service availability is available would promote competition by discouraging commercial providers from blocking out larger areas. Therefore, both Fort Worth and Harris County encourage the comptroller to adopt a rule which would allow applicant to apply for funding at the individual address level and ensure that all unserved locations are served as designated areas. The comptroller is sympathetic to the concerns raised by

these comments and agrees that ensuring that no community is placed at a disadvantage is critical to successfully expanding broadband connectivity throughout the state. In setting the scope of designated areas the comptroller chose the smallest geographical census unit and will rely on address level data in determining whether census blocks are eligible for funding under the broadband development program. However, because Government Code, §490I.0105 mandates that the eligibility of a designated area is determined by reference to the percentage of addresses within the area that are unserved, the comptroller is unable to implement map eligibility at the address level as suggested. The comptroller disagrees with the comment from the City of Austin that its map will be misaligned with the FCC national fabric map because, as previously noted, the broadband development map will rely on address level data to determine eligibility. The comptroller acknowledges the City of Austin's concern regarding the potential for disparate treatment of closely proximate addresses to be treated disparately but notes that possibility is an inevitable consequence where boundaries are created, and addresses are located on opposite sides of a dividing line. Accordingly, the comptroller declines to make changes to the proposed rule based on these comments.

Some commenters, including DETCOG and several East Texas county judges, commented rural areas are at risk of being systematically disadvantaged from receiving funding because of high capital and operational costs that make these areas unprofitable. Therefore, they suggested that the comptroller should construct designated areas to disallow or discourage providers from selecting project areas that contain only profitable census blocks while leaving out more costly and less sustainable census blocks. These commenters further suggested disallowing applicants from designating their proposed project areas. The comptroller disagrees with these suggestions. The comptroller believes using a census block, as the smallest geographical census unit, aligns the state broadband map with the FCC national fabric map and ensures that area eligibility will be determined on an objective and consistent basis. Therefore, the comptroller declines to construct boundaries for designated areas to achieve the end result desired by the commenters. Further, the comptroller notes that under Government Code, §490I.0103(c) he does not have the authority to regulate the broadband service providers and therefore may not affirmatively require a broadband provider to group both profitable and less profitable locations together or mandate the project areas for which an applicant must submit an application. However, the comptroller agrees no area in Texas should be left out from receiving funding under the program because of the high cost of deploying broadband to those locations. Based on these comments, the comptroller adopts proposed §16.30 with changes to limit the ability of an applicant to cherry pick the boundaries of a proposed project to exclude unprofitable or high-cost locations. In addition to ameliorating the commenter's concerns, the rule as adopted will better enable the office to identify and address overlapping project areas.

The comptroller received an additional comment from TCA regarding proposed §16.33(a) - (c) in which they recommended that the comptroller primarily rely on the FCC's National Broadband Maps rather than developing a state map. TCA argued that the office is not required by statute to publish a map if the FCC produces a map that enables the office to identify eligible and ineligible areas and that the federal map would be a granular, location-fabric-based map that would meet statutory requirements. TCA further noted that designating the FCC's National Broadband Map was consistent with state law, would be more efficient than creating a state map and would avoid creating a competing map that could create unnecessary confusion. TCA therefore recommended deleting language in the proposed rule which would allow the office to develop a state map. The comptroller disagrees with this comment. The comptroller anticipates that the state broadband development map, when completed, will reflect data sourced from both the FCC and local broadband service providers, and will thus better reflect regional needs than a map that solely relies on federally sourced data. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

Texas Rural Funders expressed concerns regarding proposed §16.33(b) noting that rural regions could be disadvantaged if data from the FCC is not available to develop or update the state broadband development map. Texas Rural Funders therefore recommended that the comptroller consider including a provision in the proposed rule which would allow the office to use other sources of data to provide greater accuracy. The comptroller notes that Government Code, §490I.0105(g) provides that if data from the FCC is unavailable or insufficient, the office may request information from broadband service providers or political subdivisions. The comptroller adopts the proposed rule with changes to mirror the statutory language to permit the office to use statutorily authorized alternate sources of data in the event data from the FCC is not available or is otherwise insufficient. The rule as adopted will ensure that the office will be able to consider alternative sources of data as necessary to develop the state map.

Lit Communities submitted an additional comment regarding proposed §16.33(c), recommending a rule that requires speed data tests to be used in determining designated area eligibility. Government Code, §490I.0105(f) requires the comptroller to create the broadband development map in a manner that is consistent with the most current mapping methodology adopted by the FCC and its methodology does not use speed data tests. The comptroller may request information necessary to create or update the map from political subdivisions and broadband service providers but may not require a subdivision or provider to report information in a format different from the format required by the most current mapping methodology adopted by the FCC. Requiring additional information, including speed test data, contravenes these statutory requirements. For this reason, the comptroller declines to make changes to the proposed rule based on this comment.

Many commenters raised concerns regarding the area eligibility requirements of proposed §16.33(d).

Texoma contrasted the designated area eligibility requirements in the proposed rule to the requirements of the USDA ReConnect4 federal program which provides for a lower percentage of covered addresses. Under that program, at least 50% of households in the proposed funded service area must lack sufficient access to broadband service area to be eligible to receive funds. SA Digital Connects argued in favor of eliminating the threshold requirement altogether stating that an area should be considered eligible under the program if it has any percentage of addresses that lack access. The comptroller also received comments from other organizations and individuals including CCECA, Rise Broadband, TCA and TEC encouraging the comptroller to consider expanding the eligibility criteria to account for underserved areas. TEC noted that the comptroller through its mapping initiative should ensure an equitable distri-

bution of funding to areas with the greatest demonstrated need and recommended that the comptroller leverage the important definition of underserved provided in the proposed rules to expand access in areas that are currently ineligible and increase broadband speeds beyond the statutory 25 Mbps download and 3 Mbps upload (25/3 Mbps) speed threshold. In making this recommendation TEC argued that the definition of broadband contained in Government Code, §490I.0101(a) only established *minimum* broadband requirements and opined that the comptroller's broad rulemaking authority allowed the comptroller to consider underserved areas when creating the broadband development map. TEC underscored its concern that the current statutory threshold speeds are already inadequate to ensure that all Texans are able to leverage and benefit from digital connectivity. TEC further noted that strict adherence to statutory threshold speeds may provide a reverse incentive for entities to artificially lower download and upload speeds to ensure eligibility for future funding. The comptroller disagrees with these comments. Government Code, §490I.101(a) defines "broadband service" as Internet services with the capability of providing broadband speeds of 25/3 Mbps or faster and Government Code, §490I.0105 requires the comptroller to publish a map classifying each designated area in this state as eligible or ineligible to receive funding under the program based on access to "broadband service." The only statutory provision that provides discretion to the comptroller to adjust the minimum download or upload speeds only applies if the FCC adopts speeds that are different from those specified by Government Code, §490I.0101(a). The comptroller lacks the discretion to deviate from the statutory requirements and therefore declines to make changes to the proposed rule based on these comments.

The comptroller received a further comment regarding proposed §16.33(d) from Lit Communities requesting that the comptroller consider clarifying the technologies that are considered to be broadband service. Under Government Code, §490I.0106(d), the office may not favor a particular broadband technology in awarding grants; therefore, the comptroller may not take broadband technologies into account when developing the broadband development map. Consequently, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received a comment from CCECA regarding proposed §16.33(e)(2) recommending that the comptroller build in more flexibility to account for future changes in the law or program requirements by amending the proposed rule to allow designated areas to receive funding notwithstanding the prohibition from receiving funding on account of previous federal funding if future federal or state law changes. The comptroller appreciates this comment from CCECA but notes that the proposed rule complies with the statutory language contained in Government Code, §490I.0105(a)(2) which prohibits the office from designating an area as eligible for funding if the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area. Further, a change in federal law would not affect this state law provision. Therefore, the comptroller declines to make changes to the proposed rule based on this comment. In the event state law changes the comptroller will amend the rule to comply with state law.

CCECA and TEC provided additional comments regarding proposed §16.33(e) recommending that, in addition to disallowing eligibility on the basis of previously awarded federal funding, the comptroller consider limiting eligibility for areas that have received private grants. TEC argues that such a change would be in keeping with the spirit of the rule preventing overlap of state and federal efforts and would level the playing field by accounting for private grants and federal funds in the same manner. The comptroller disagrees with this comment. Implementing such a provision would be impractical because, unlike competitive federal awards, no independent means of verifying whether a designated area has received private grants exists. In addition, the comptroller notes that under proposed §16.40(b)(4) the office is required to evaluate whether applicants have matching funds and their sources. Implementing a rule which limits eligibility due to the receipt of private grants could also affect the ability of applicants to qualify for awards under the program based on the proposed evaluation criteria. For these reasons, the comptroller declines to make changes to the proposed rule on the basis of these comments.

TARC also commented on proposed §16.33(e)(2), questioning whether a mapping or study project funded by a competitive federal grant would be covered by the proposed rule. The comptroller thanks TARC for this comment and the opportunity to address this issue. The comptroller does not believe a mapping or study project would be covered by the proposed rule. The purpose of the proposed rule is to ensure that designated areas do not receive duplicative funding from state and federal sources for the deployment of broadband infrastructure. A mapping or study project is not a commitment to build broadband infrastructure. Consequently, the comptroller does not believe any action is necessary as a result of this comment.

The comptroller received many comments concerning proposed §16.33(f) which permits the comptroller to consider an area eligible for award notwithstanding the prohibition contained in §16.33(e)(2). Under the proposed rule, the office is permitted to reclassify an area as eligible if the area received previous federal funding more than two years before a notice of funding availability was issued by the office or if the project has already been completed and the designated area was otherwise eligible to receive funding. The proposed rule's aim was to avoid an otherwise eligible designated area being subjected to a permanent funding prohibition despite demonstrable continuing need. The comptroller received comments from TEC that were supportive of efforts to allow designated areas to receive funding despite the existence of previous federal funding but recommended that the comptroller also consider expanding eligibility to include areas awarded funds within two years of the notice of funds availability issuance if the project was not completed. CCECA also commented on the rule, requesting that the comptroller provide additional clarification regarding potential conflicts with other federally awarded grants. The comptroller also received comments against adoption of the proposed rule from AMA-TechTel, TCA, and TTA. AMA-TechTel recommended that the comptroller disallow acceptance of grant applications for an area that received previous public funds at least until the prior recipient of funds has had a reasonable opportunity to meet their prior obligations. Similarly, AMA-TechTel recommended that the comptroller preclude a recipient of prior funds that has not met its obligations from applying for additional funding for the same area. AMA-TechTel noted in its comments that the lead time to complete a project is extensive and its belief that additional funding would not enable broadband service to be deployed more quickly. Consequently, AMA-Techtel recommended that the rule exclude all areas in which there is an existing obligation to provide broadband services. Meanwhile, TTA suggested that the requirement be clarified to allow an area to be considered unserved under this provision only if the areas received federal

funding for deploying broadband speeds less than 25/3 Mbps. TTA encouraged the comptroller to maintain fidelity with House Bill 5 and retain an area as ineligible if the federal government awarded funds under a competitive process to support the deployment of 25/3 Mbps or better broadband service to the area, noting that doing so would ensure funds are utilized for areas that have not been funded for buildout. TCA similarly was against adoption of the proposed rule as departing from the statutory framework and exceeding the comptroller's authority to administer the program. TCA commented that under House Bill 5 the legislature created a framework for Texas' broadband grant programs to ensure that the programs do not duplicate support to areas that have already received funding for deployment of broadband. TCA further commented that the time periods contained in the proposed rule are inconsistent with statutory language which imposes no time limit on the prohibition against using state funds in an area that has already received federal funding. In addition, TCA noted that the time periods may also be inconsistent with the guidance accompanying many of the federal funding sources that the office will be utilizing. While the proposed rule attempted to provide a clear framework for the statutory prohibition, the comptroller agrees with the comment that this makes the rule inconsistent with statutory language and withdraws proposed §16.33(f).

AT&T provided a related comment requesting that the comptroller ensure that designated areas that qualified for, but have not received, funding under the federal Rural Digital Opportunity Fund (RDOF) should be considered eligible. The comptroller is unable to make changes to the proposed rule based on this comment because the plain language of House Bill 5 provides that an area is ineligible if the federal government has *awarded* funding under a competitive process to support the deployment of broadband service to addresses in the designated area and no allowance was made for non-receipt of federal funding based on an award.

The comptroller received related comments from SOS Communications acknowledging the eligibility issues created by House Bill 5 as they relate to federal funding received under the federal RDOF program and urging the comptroller to actively press the FCC to rapidly release areas affected by entities in default and ensure states receive immediate notification of renewed area eligibility in the case of default or forfeiture. The comptroller thanks SOS Communications for engaging on this important issue and agrees that communities should not be ineligible for funding due to outdated information. The comptroller does not believe the comment is within the scope of the current rulemaking and therefore declines to make a change to the proposed rules based on this comment.

The comptroller received 14 comments related to proposed §16.34, concerning designated area reclassification. OPUC commented in support of the right of the comptroller to rescind an award and recoup funds when deemed necessary. AT&T also supported the claw back authority and commended the comptroller for considering a reasonable time frame for doing so.

TARC recommended the comptroller add a definition for "political subdivision", expressing the concern that if left undefined the notice requirement in proposed §16.34(a) would be unduly burdensome to the comptroller. The comptroller agrees with this comment insofar as it relates to the administrative burden it may place upon the comptroller to identify and provide notice to all political subdivisions that may be impacted by a petition to reclassify a designated area. The comptroller adopts the proposed rule with amendments to allow the comptroller provide notice to political subdivisions by publication of the petition on the comptroller's website. Doing so will ease the administrative burden on the comptroller while ensuring that all affected parties receive appropriate notice.

TTA expressed a concern regarding the award recoupment authority outlined in proposed §16.34(g), noting that the proposed rule creates business uncertainty in that it does not have a time restriction limiting the comptroller's authority to recoup funds, noting that a project could be substantially completed and still be subject to recission. The comptroller agrees with this comment. To address this concern, the comptroller adopts proposed §16.34(a) with changes to limit the time frame in which a petition for reclassification can be filed with the comptroller. The rule as adopted will reduce business uncertainty by ensuring that reclassification will be made in a timely manner and therefore reduce the risk associated with an award recission.

Lit Communities submitted a comment regarding proposed §16.34(b)(2) in which they requested clarity on whether, under the proposed rule, a petition for reclassification would automatically fail if a broadband service provider does not provide the required information. The comptroller does not anticipate that a petition for reclassification would automatically fail in the event that a broadband provider other than the petitioner fails to submit the required information. The comptroller would continue to evaluate whether a designated area should be reclassified based on the information contained in a petition and any other information submitted to it from other providers or political subdivisions using the criteria set out in proposed §16.34(d). Consequently, the comptroller does not believe any action is needed in response to this comment.

Lit Communities also commented that the date for the office to make a determination under proposed §16.34(c) is unclear and requested the comptroller to clarify whether the due date is calculated from the date the office provides the notice or the date the notice is received. The comptroller disagrees with this comment because the proposed rule clearly states that the date for making a determination is the 75th day after a broadband service provider receives the required notice. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received comments from CCECA encouraging the comptroller to clarify the party responsible for providing the reclassification data. The comptroller also received comments from TCA and TEC supportive of requiring the proponent of reclassification under proposed §16.34 to bear the burden of providing the necessary evaluation information. TCA particularly noted that the rule should require the proponent to provide speed test data from the point of demarcation to ensure that the challenge data is reliable. TEC appeared to agree that the rule should specify the source of the challenge data but was neutral on whether a challenger had to conduct their own speed tests or could rely on information sourced from another entity. The comptroller disagrees with these comments. The comptroller does not believe imposing the burden on a petitioner for reclassification is consistent with the statutory scheme. The statutory scheme requires broadband service providers in a designated area that has been challenged to provide information to the office regarding whether a designated area should be reclassified. In addition, the proposed rule provides an opportunity for all interested political subdivisions and broadband service providers to submit

input on whether a petitioner has made a showing that a designated area should be reclassified. Accordingly, the comptroller declines to make changes to the proposed rule based on these comments.

Lit Communities also commented on proposed §16.34(d). In their first comment, Lit Communities noted that the term "Internet" in proposed §16.34(d) should be changed to "broadband" because the word was not defined or used elsewhere in the proposed rules. The comptroller disagrees with this comment because the language in the rule mirrors statutory language prescribing the factors the office is required to consider for a reclassification review. In addition, the comptroller does not believe a definition is needed because the plain, ordinary meaning of the term is clear and does not cause confusion. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

Lit Communities also suggested amending the language in proposed §16.34(d)(4) to clarify that the office will determine the additional information that may be useful in evaluating funding eligibility. The comptroller agrees with the comment and adopts changes to the rule accordingly. The rule as adopted will avoid confusion as to how additional information that may be useful in evaluating funding eligibility will be determined.

The comptroller received several comments supporting its authority to recoup funds from a recipient due to area ineligibility as a result of reclassification under proposed §16.34(g). OPUC supported the proposed rule as written. However, TEC suggested that the authority to recoup such funds should not include the ability to recoup funds expended in "good faith" and in reliance on the previous classification. TEC noted that such good faith language would also prevent applicants from reducing the amount of claw back funds through deceptive expenditure of funds. CCECA agreed with TEC comments, encouraging the comptroller to limit the amount it may recover when an area is reclassified and determined not to be an eligible area. The comptroller agrees with these comments. Providing a "good faith" exception to recoupment of funds will provide business certainty for applicants while maintaining the comptroller's ability to claw back funds awarded in error as necessary. Accordingly, the comptroller adopts the proposed rule with amendments.

The comptroller received many comments related to proposed §16.35, concerning program eligibility requirements. TEC and CCECA commented that the rule was unclear as to whether funding was limited to prospective projects or would also be available for projects already in progress. Both TEC and CCECA encouraged the comptroller to expressly allow in-progress projects in eligible areas to receive funding. The comptroller disagrees with these comments because the comptroller does not believe that retroactively making funds available to projects that are already in progress will further the purpose of expanding access to and adoption of broadband service in unserved areas. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

EDS noted that the program eligibility requirements seemed to favor major internet service providers and requested clarification as to whether non-profits and private entities will have the ability to participate and create partnerships with political subdivisions within the state of Texas. The comptroller notes that proposed §16.35(a) contemplates partnerships between eligible participants including partnerships between noncommercial providers and private entities with political subdivisions of this state. Therefore, the comptroller does not believe a change to the proposed rules is necessary based on this comment.

Fort Worth and Harris County expressed appreciation that the proposed rules designated political subdivisions as eligible applicants but noted that political subdivisions are limited in their ability to provide direct broadband service to commercial and residential customers under state law. Therefore, they expressed concern that the proposed rules do not highlight the critical role of local governments by allowing commercial broadband service providers to apply for funding without local government coordination. Fort Worth and Harris County suggested that requiring a partnership between a commercial provider and a political subdivision with jurisdiction over the proposed project area would ensure service provider accountability. The comptroller notes that under proposed §16.40, the office is required to consider and may give preference to applications that demonstrate the existence of community, non-profit, or cooperative involvement or participation in a project. However, Government Code, §490I.0103(c) divests the comptroller of authority to regulate broadband services or broadband service providers so the comptroller lacks authority to require a commercial broadband provider to partner with a political subdivision. Accordingly, the comptroller declines to make changes to proposed rule based on these comments.

Gigabit expressed concern that the proposed program eligibility requirements may conflict with Utilities Code, §54.201 and §54.202, which they interpret as prohibiting municipalities and similar government entities from providing commercial broadband service. Therefore, Gigabit suggested the comptroller remove political subdivisions and non-commercial broadband service providers from the list of eligible applicants to avoid a conflict. On a related note, Gigabit also noted that the comptroller should adopt language permitting the program to fund middle-mile projects. Under the statutory scheme for the office and the proposed rules, the comptroller is not limited to awarding grants to last-mile broadband infrastructure projects and may consider any use which expands access to and adoption of broadband service in designated areas, including middle-mile projects. Without opining on whether Gigabit's interpretation of Utilities Code, §54.201 and §54.202 is correct, the comptroller notes that the office may award funding for a middle-mile connectivity project to a municipality to expand its fiber optic cable network if the municipality can demonstrate that the proposed project would expand access to and adoption of broadband service. In addition, Government Code, §490I.0106(d) provides that the office may not award a grant, loan, or other financial incentive to a noncommercial provider of broadband service for an eligible area if a commercial provider of broadband service has submitted an application for the eligible area. Because the statute gives the office broad discretion to make awards that expand the adoption of broadband and because the statute clearly contemplates that grant funds may be awarded to both commercial broadband service providers and noncommercial service providers, the comptroller declines to make changes to the proposed rule based on these comments.

Rise Broadband also commented on this section seeking clarification as to whether middle-mile projects would be eligible to receive funding and, if so, whether the comptroller contemplated rules that would require interconnect obligations whereby a grant recipient would have to allow access to its conduit to third parties on a non-discriminatory basis. As previously noted, the comptroller believes that under the current statutory scheme the office is not limited to awarding grants to last-mile

broadband infrastructure projects and may consider any use which expands access to and adoption of broadband service in designated areas, including middle-mile projects. Government Code, §490I.0103(c) clarifies that the comptroller lacks authority to regulate broadband services or broadband service providers. Therefore, the comptroller may not require by rule that a grant recipient that receives funding for middle-mile deployment of broadband services to allow access to its conduit to third parties on a non-discriminatory basis. However, an applicant seeking such funding would have to demonstrate how the proposed project would expand access to and adoption of broadband service in designated areas and failure to allow third parties access to its network to connect to end users would decrease the likelihood a project will receive funding.

Mr. Herb Krasner requested without further comment that the comptroller explicitly provide that an HOA should be considered a cooperatively organized entity that is eligible to receive funding under the program. The comptroller disagrees with this comment as unnecessary. Under the proposed rule, eligible participants include both commercial and noncommercial broadband service providers. If an HOA qualifies as a broadband service provider then it would be considered an eligible participant regardless of how it was organized. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

Several commenters, including DETCOG, Lit Communities, and SA Digital Connects were against the preference in proposed §16.35(b) given to commercial broadband service providers when awarding grant funds. DETCOG commented that the requiring a non-commercial broadband service provider to withdraw its application if a commercial broadband service provider submitted an application for the same area was nonsensical, especially where a non-commercial provider had a better proposal. DETCOG further noted the potential for commercial providers to submit an application for an area they know cannot sustain service just to block competing proposals. The comptroller also received comments from several county judges who noted that the commercial preference may result in noncommercial providers only having access to unsustainable census blocks. These commenters therefore urged the comptroller to revise the rule to allow for open competition. Lit Communities likewise questioned the reasoning for disallowing awards to noncommercial broadband service providers if a commercial provider submits an application for the same area. SA Digital Connects expressed a concern that municipalities would be effectively ineligible to receive funding due to this preference and sought clarification as to the definition of "commercial" and "noncommercial". TFA likewise commented that electric cooperatives should be able to compete with commercial providers. The comptroller disagrees with these comments because the office is prohibited by Government Code, §490I.0106(d)(3) from awarding a grant to a noncommercial provider of broadband service for an eligible area if a commercial provider of broadband service has submitted an application for the eligible area. Therefore, the comptroller declines to make a change to the proposed rule based on these comments.

Other commenters including TARC and TTA were neutral regarding the preference while urging the comptroller to provide clarification for definitions for both "commercial" and "noncommercial" broadband service providers. Several commenters urged the comptroller to consider specific suggestions regarding how these terms should be defined. DETCOG recommended that the comptroller should explicitly characterize electric and telephone cooperatives as commercial broadband service providers. DETCOG further commented that political subdivisions of this state should be excluded from the definition of noncommercial broadband service providers. TEC also commented in favor of expressly including electric cooperatives as commercial broadband service providers, arguing they are privately owned corporations that provide a commercial service in a competitive market. CCECA in its comment, endorsed TEC's comment and recommended including electric cooperatives as commercial broadband service providers. TTA urged the comptroller to tie the definition of commercial providers to "for profit" entities but also encouraged the comptroller to include electric cooperatives in the definition of commercial providers. The comptroller agrees with commenters suggesting that the comptroller define these terms to provide clarity on how the commercial provider preference will be implemented. The comptroller adopts definitions in §16.30 with changes to clarify which applicants will be considered commercial broadband services providers based on these comments.

Lit Communities commented that the preferences between political subdivisions, commercial service providers or any partnership combination are not clear. TARC commented on how the preference would be implemented where a partnership between commercial and noncommercial entities existed. TTA also noted this issue and recommended that the comptroller specify that a partnership that includes a commercial provider will be considered a commercial provider for the purposes of the rule. The comptroller agrees with these comments and adopts the rule with changes to clarify how partnerships involving a commercial provider will be treated.

Finally, OPUC urged the comptroller to harmonize proposed §16.35 with rules adopted by the Public Utility Commission ("Commission") related to the provision of middle-mile broadband capacity by electric utilities. OPUC noted that under Commission rules electric utilities are required to submit broadband service plans for review to the Commission. They further noted that the Commission rule allows for the inclusion of investments to provide middle mile facilities into electricity rates and therefore noted that it is imperative that the comptroller harmonize its rules to ensure that no one receiving a broadband grant from the office can double recover if an entity is also an ISP under Commission rule. The comptroller agrees with this comment. Electric utilities that are regulated by the Commission and allowed under Commission rule to include the cost of infrastructure investments in electricity rates should be prohibited from double recovery of infrastructure investments. However, the comptroller finds that the comment is outside the current rulemaking but anticipates that it will coordinate with the Commission to ensure this concern is addressed. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received approximately 13 comments in support of proposed §16.36, concerning the application process generally, from AMA-TechTel, Frontier, CCECA, Lit Communities, OPUC, TCA and TEC.

In its comments, TCA expressed a concern that the proposed rule does not contain an express confidentiality provision that would allow providers to designate application information submitted to the office as proprietary. TCA noted that the lack of such a provision could discourage some providers from sharing sensitive cost or technical data in applications. Therefore, TCA suggested adding language to the proposed rule allowing appli-

cants to designate information as proprietary and requiring the office to maintain designated information as confidential to the extent consistent with the Public Information Act. The comptroller disagrees and views this comment as unnecessary because the Public Information Act already contains provisions regarding the confidentiality of proprietary information. In addition, the comptroller anticipates that its on-line application will allow applicants to clearly mark or designate submitted information as proprietary. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

Frontier commented on proposed §16.36(d) suggesting that the comptroller require a list of locations be published on the comptroller's website. The comptroller also received one comment from TCA regarding proposed §16.36(d) suggesting that the comptroller should require applicants to provide, and the office to publish, a GIS map or address list for each application. The comptroller disagrees with these comments. The proposed rule mirrors the statutory language contained in Government Code, §490I.0106(e), which permits the office to publish on its website any other information from an application the office considers relevant or necessary. The comptroller anticipates that applicants will be required to provide maps and address information for their proposed project areas and that the office will publish the requested or similar information on its website. The comptroller therefore believes that a rule making such publication mandatory is not needed. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received two comments from CCECA and TEC recommending that the comptroller include language in proposed §16.36(e) to permit parties to submit, and the comptroller to consider, neutral and supporting comments as part of the application protest process. TEC noted that including such language would provide the office with a larger picture of potentially contested applications and thereby better inform decision making. The comptroller disagrees with these comments. The application protest process as outlined in proposed §16.36(e) permits an interested party to submit a protest for failure of an applicant or proposed project to meet objective eligibility or program criteria. The comptroller does not believe that permitting interested parties to submit neutral and supporting comments for an application would be useful in making a factual determination based on objective criteria. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

The comptroller received two comments from Lit Communities and AMA-TechTel related to the application and protest process in proposed §16.36. Specifically, Lit Communities recommended two changes to the application protest process: extending the deadline for submitting a protest to a range of 45-60 days and limiting protests to applications that have sufficient baseline points to move forward in the evaluation process. AMA-TechTel, by contrast, recommended that application and related deadlines be deleted from the rules and instead be included in each individual notice of funds availability as the deadlines may need to differ materially based on how grant applications will be reviewed. The comptroller is statutorily required by Government Code, §490I.0106(e)-(f) to post on its website information from each accepted application for a period of at least 30 days and must accept from any interested party a written protest during the 30-day posting period. The proposed rule mirrors these statutory requirements. Accordingly, the comptroller declines to make changes to the proposed rule based on these comments.

Lit Communities also suggested the comptroller include a definition for "interested party" in light of proposed §16.36(e) which permits any interested party to submit a protest of an area designation as an eligible or ineligible area. The comptroller agrees with this comment and adopts the rule with changes to clarify which parties have standing to submit a protest to the office.

The comptroller received two comments from CCECA and TEC regarding proposed §16.36(f). TEC noted that allowing for the resubmission of an application without successfully challenged locations is an important efficiency measure for processing applications. However, TEC also noted that the proposed rule does not expressly limit the addition of new areas in a resubmitted application and expressed a concern that an applicant could do so without being subject to further protest. Consequently, TEC and CCECA urged the comptroller to clarify that an applicant may only amend its application to remove the challenged areas and may not submit an amended application that contains additional areas or locations. The comptroller agrees with these comments. Accordingly, the comptroller adopts the proposed rule with changes. The rule as adopted will remove ambiguity regarding how an application may be amended after a successful location challenge.

The comptroller received several comments related to proposed §16.37, concerning overlapping application or project areas. OPUC supported the proposed rule. Frontier, Nextlink, TCA, TTA and Texoma's comments were generally in support of the proposed rule with changes. Finally, Lit Communities was against adoption of the proposed rule.

Frontier commented on the likelihood that many applications will contain overlapping areas and will require amendment in accordance with the proposed rule. To reduce the administrative burden associated with the amendment process and ensure efficient review, Frontier recommended that the comptroller amend the proposed rule to require applicants to submit a revised summary instead of a complete application. The comptroller agrees with this comment but does not believe a change to the proposed rule is necessary. The comptroller anticipates implementing an online application process in which applicants will be able to remove overlapping addresses online and then easily resubmit the application without the overlapping areas.

Nextlink provided a comment suggesting that the comptroller clarify the method the office will use to calculate the remaining project area under proposed §16.37(e). The comptroller disagrees with this comment. The comptroller does not believe a change to the proposed rule language is needed since the rule allows the comptroller to use any reasonable method for that purpose. The comptroller anticipates that it will calculate the remaining project area by calculating the ratio of the number of serviceable locations in an overlapping area to the total number of serviceable locations in the original project area, or may use another reasonable method. The comptroller declines to make changes to the proposed rule based on this comment.

TTA expressed concern in its comments that under proposed §16.37(e) an applicant whose project area is reduced below 50% of the original project area due to area overlap may not be consulted to verify whether the applicant is willing to amend and resubmit its application before the office may remove its application from consideration. TTA therefore recommended deletion of this proposed rule. TTA further commented that because it was

recommending deletion of proposed §16.37(e), the comptroller should also delete proposed §16.37(f)(1) and (2) as unnecessary. The comptroller disagrees with these comments. The comment suggests that applicants may not be afforded an opportunity to amend their applications as a result of overlapping area remediation prior to the office removing an application which is not the case. Proposed §16.37 establishes a process for providing notice to applicants that their applications have overlapping areas and affording applicants the opportunity to cooperatively resolve instances of overlapping project areas. Thereafter, applicants are permitted to submit their proposed resolution to the office and submit an amended application. Under proposed §16.37(d), only if the applicants are unable to resolve the overlapping project areas is the office permitted to independently evaluate the applications and remove overlapping areas from the lower scoring application(s). Section 16.37(e) is intended to permit the office to remove an application from consideration only if applicants fail to mutually resolve the overlapping areas and remaining project area is reduced below 50% of the original project area. The comptroller does not believe that after being given the opportunity to resolve instances of overlapping areas and amend its application, an applicant should be able to later amend their application after the office has already evaluated their application. However, based on these comments the comptroller adopts §16.37(e) with changes to clarify that the office may remove an application from consideration only after affected applicants fail to resolve instances of overlapping areas. The rule as adopted will aid transparency, promote fairness in how applications are treated, and avoid undue administrative delay. The comptroller declines to make changes to §16.37(f) based on these comments.

The comptroller received two comments from TCA and Texoma recommending that the comptroller extend the application amendment deadline in proposed §16.37(g). Texoma noted in its comments that additional time may be needed to allow applicants to consult with engineering personnel to rescope proposed service areas. The comptroller agrees with the suggestion that additional time to allow an applicant to submit an amended application may be needed. Therefore, the comptroller adopts the proposed rule with changes to allow applicants 10 business days, instead of calendar days, in which to submit and amended application.

Lit Communities commented against adoption of §16.37, noting that the proposed rule is unnecessary if applications are awarded on a competitive basis to the highest evaluated proposal. The comptroller disagrees with this comment. The proposed rule is intended to permit the office to evaluate applications that may have overlapping areas while also ensuring that overlapping project areas do not receive duplicate funding by providing a mechanism through which overlapping areas are removed from otherwise eligible projects. Withdrawal of the proposed rule could result in otherwise eligible areas not receiving an award because the application containing the eligible area also had overlapping areas with another, higher scored application. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received many comments related to proposed §16.38, concerning the special rule for overlapping project areas in noncommercial applications. OPUC commented in favor of the proposed rule. DETCOG reiterated its comments against providing a preference to commercial providers. The comptroller also received comments from several county judges who noted noncommercial broadband service providers that offer internet service to rural areas balance the unsupportable cost of remote locations with revenue generated by more densely populated areas. These commenters raise the concern that although identified as eligible participants by §16.35, noncommercial entities would be effectively barred from participation because the rule operates to automatically award challenged areas to commercial providers. The commenters noted that in doing so noncommercial providers would potentially only have access to unsustainable census blocks. Therefore, these commenters recommended the rule be revised to allow open competition between commercial and noncommercial providers. In the alternative these commenters suggested the comptroller put in place safeguards to ensure the office awards funding only if proposed projects connect broad service areas that include both profitable areas and unserved, less profitable census blocks. Like other commenters, TLL opposed the proposed rule as having the potential to negatively impact effective rural broadband deployment in rural communities. The foundation specifically noted that a rule that tips the scales in favor of commercial entities may undermine sustainable, inclusive broadband development in rural Texas. TLL therefore urged the comptroller allow open competition between commercial and noncommercial providers. The comptroller understands the concerns raised by these comments and agrees that the broadband development program should ensure that its proposed rules do not unintentionally penalize rural areas. However, because the priority to applications made by commercial broadband service providers is statutory, the comptroller lacks authority to make changes to the proposed rule based on these comments.

Lit Communities questioned the necessity of the proposed rule and reiterated its comments against the commercial provider preference. As previously noted, the commercial provider preference is statutory and the comptroller lacks authority to make changes to the proposed rule based on this comment.

TTA reiterated previous comments urging the comptroller to provide clarification regarding how partnerships would be treated and recommending that partnerships that include both a noncommercial provider and a commercial provider be treated as commercial providers consistent with their comments for §16.35. The comptroller agrees with this comment and will adopt proposed §16.35 with changes in response to this comment.

TTA also requested the comptroller to provide additional clarification on what a partnership would entail for the purposes of the rules. The comptroller believes a change to the proposed rule is unnecessary at this time because it does not want to artificially restrict the form a partnership agreement may take between cooperating participants. Nevertheless, the comptroller anticipates that its notices of funds availability and application instructions will prescribe the additional documentation the office will require from partnering applicants. Accordingly, the comptroller declines to make a change to the proposed rule based on this comment.

The comptroller received several comments related to proposed §16.39, concerning application requirements. OPUC commented in support of the proposed rule.

Lit Communities commented that the comptroller should consider a method for applicants to use the broadband development map when submitting an application. Lit Communities further requested clarification on whether the required map would be static or electronic. The comptroller anticipates that its online application will allow applicants to use the broadband development map and that the map will be electronic. However, the comptroller believes these comments are outside the scope of this rule-

making and therefore the comptroller declines to incorporate the changes in its proposed rule.

The comptroller also received comments from TCA regarding proposed §16.39. TCA commented that the proposed rule should include language requiring applicants to affirmatively certify that project funds will only be used to connect unserved or underserved locations within eligible census blocks. TCA argued that such language should be required to avoid wasteful spending. TCA also suggested that the proposed rule require an applicant to contact in writing all broadband service providers in or near proposed project areas to verify whether the proposed area would overlap with existing or planned service areas. The comptroller disagrees with these comments. For the reasons explained in the comments related to §16.42, the comptroller does not believe language prohibiting the use of funds to connect unserved or underserved locations within eligible census blocks is necessary. Consequently, the comptroller declines to make changes to the proposed rule based on these comments.

The comptroller received 32 comments related to proposed §16.40, concerning application evaluation criteria. OPUC in its comments commented favorably about the evaluation criteria and agreed that applications should be prioritized, especially to address distinct concerns related to location, affordability and affected household metrics.

Several commenters including Nextlink, Texoma and TTA were supportive of the proposed rule but recommended that the comptroller provide additional information about the weighting of evaluation criteria. Mr. Herb Krasner requested that the comptroller specify the evaluation criteria in order of priority and provide the weighting factors that are to be considered. Texoma commented that the rule should include a weighted scaled for the evaluation criteria, while TTA recommended the comptroller consider language requiring the office to provide weighting information in each notice of funds availability. The comptroller appreciates the concern raised by these comments but does not believe either providing for a fixed weighted scale by rule or requiring the office by rule to include weighting information in each notice of funds availability is necessary. The proposed rules give authority to the comptroller to provide more detailed information about the evaluation criteria including the applicable preference factors and the relative weight of each factor in a notice of funds availability. Relatedly, TCA commented that the comptroller should consider employing a stakeholder process to evaluate and refine any scoring matrix it implemented in notices of funds availability. The comptroller thanks TCA for its suggestion and will consider soliciting stakeholder feedback in the future regarding any scoring matrix that may be implemented in a notice of funds availability but finds that TCA's comment is outside the scope of these rules. Consequently, the comptroller declines to make changes to the rule based on these comments.

The comptroller received several comments from organizations supporting the inclusion of additional criteria in the proposed rules.

Frontier submitted multiple comments regarding the evaluation criteria in proposed §16.40 noting that the proposed rule was well founded. Frontier outlined additional factors the comptroller should consider including in the proposed rule. Frontier recommended the prioritization of symmetrical speeds and low latency noting the transformative nature of how broadband has developed from a focus on streaming to a reliance on interactive two-way video applications. Frontier also recommended network scalability and long-term sustainability as an important consideration in prioritization of funding. Frontier also singled out network resilience and the need for broadband networks to be less susceptible to damage due to extreme weather events as a factor the comptroller should consider including as a prioritization factor. Finally, Frontier also suggested the comptroller should consider the entire scope of a proposed project, and not just areas that are grant eligible, when evaluating an application. The comptroller generally agrees that technical specifications of a proposed project, including these identified factors, are important considerations in the application evaluation process. The comptroller notes that the proposed rules already permit the office to consider the technical specifications of a proposed project. The comptroller anticipates that its guidance documents will provide further information regarding the technical specification requirements and allow applicants to provide any additional related specifications they believe demonstrate their proposed project is competitive. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

Frontier submitted an additional comment suggesting that the comptroller include a requirement or prioritization factor that considers whether an applicant is including a standalone voice service to better assure that users in rural, high-cost areas continue to have access to voice service. The comptroller disagrees with this comment because the provision of voice service is regulated by another state agency and is outside the scope of his authority to further the expansion of broadband service. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

Gigabit agreed with comments suggesting that the proposed rules consider future scalability, recommending inclusion of additional mandatory and permissive factors requiring the office to prioritize applications which expand the state's core infrastructure in a manner that facilitates deployment of next generation communications systems. As previously noted, the comptroller generally agrees that technical specifications of a proposed project, including future scalability are important considerations in the application evaluation process. However, because the comptroller has already included technical specifications as a prioritization factor, the comptroller does not believe making a change to the proposed rule is necessary.

Lit Communities also provided multiple general comments regarding the evaluation criteria. Lit Communities encouraged the comptroller to consider more directly tying the evaluation criteria to the State Broadband Plan and consider regional specific evaluation criteria that incorporate key metrics that the office has identified as needing improvement. The comptroller is appreciative of this comment and agrees that regional needs may differ and thus necessitate region specific criteria to address key identified needs. The comptroller notes that while the evaluation criteria imposed by this rule are intended to be generally applicable across the state, the comptroller retains the flexibility to consider region specific criteria and metrics because the comptroller may include additional evaluation in individual notices of funding availability. Accordingly, the comptroller does not believe a change to the proposed rule is needed based on these comments.

Lit Communities also recommended the comptroller consider additional possible evaluation criteria including innovation and partnerships. However, because proposed §16.40(b)(13) permits the comptroller to consider other factors as outlined in a notice of funds availability, the evaluation criteria outlined by the rule are

non-exhaustive and the comptroller does not believe that additional express criteria are required. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

TARC also generally commented on the evaluation criteria, questioning whether the comptroller should include plans for sustainment of a project beyond the period of grant performance as an additional evaluation criterion because the grant is likely a one-time funding event. Another commenter, DETCOG, expressed similar concerns that applicants could receive funding and later raise prices resulting in broadband being available but not being affordable. The comptroller notes that under Government Code, §490I.0103(c) the comptroller does not have the authority to regulate the provision of broadband services or broadband service providers and that inclusion of plans for sustainment beyond the grant performance period as an evaluation may exceed the comptroller's authority. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

The comptroller also received many comments about specific provisions in proposed §16.40. TCA recommended the comptroller include language in proposed §16.40(a) clarifying that the evaluation criteria are intended for evaluation purposes only and are not intended to create a regulatory scheme. The comptroller does not believe amending the rule as suggested is necessary because the rule does not impose any obligations on applicants and only provides criteria the office may consider when evaluating applications. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

SA Digital Connects commented on proposed §16.40(a) suggesting that the meaning of "access to broadband services" is unclear and should be defined to reduce possible confusion. SA Digital Connects in other comments noted that urban areas continue to have thousands of households that effectively lack access to reliable broadband internet due to coverage and affordability issues as well as adoption barriers such as digital literacy. These comments reflect a concern that seem to suggest that the comptroller consider adopting a broader definition for access that takes into account factors such as affordability. The comptroller appreciates SA Digital Connects for raising this important issue. The comptroller agrees that the long-term issues of affordability and digital literacy must be addressed to bridge the digital divide. However, the proposed rule mirrors the statutory language contained in Government Code, §490I.0106(b) and the comptroller does not believe that it has the authority to stretch the definition of "access" beyond its plain and ordinary meaning to include additional factors the legislature did not include or contemplate when enacting House Bill 5. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

TCA also commented on proposed §16.40(a) recommending that the rule be clarified as only assigning priority to applications from schools within designated areas that are eligible for funding. The comptroller believes the suggested clarification is not necessary because the comptroller may not make awards outside eligible areas and because the proposed rule mirrors the statutory language contained in Government Code, §490I.0106(b). For these reasons, the comptroller declines to make changes to the proposed rule based on this comment.

TEC and CCECA also commented on proposed §16.40(a), recommending the express inclusion of underserved and low-density areas in evaluation criteria and prioritization. TEC reiterated its comments stressing the importance of high-quality deployment beyond the current definition of broadband services and requested that the comptroller consider deployment of broadband services in underserved areas to be a priority but encouraged the comptroller to explicitly include underserved areas in evaluation criteria that relate to eligibility for funding. Thus, TEC recommended amending proposed §16.40(a)(1) which provides for statutorily imposed mandatory priorities. The comptroller disagrees with this comment. As TEC acknowledged in its comment, underserved areas are already contemplated in proposed §16.40(b)(7) which provides for consideration of underserved areas as a permissive preference factor. Therefore, the comptroller declines to make a change to the proposed rules based on these comments.

The comptroller received a comment from TLL urging the comptroller to implement the matching funds language contained in proposed §16.40(b)(4) in a manner that does not negatively impact rural communities that have historically had less access to other sources of match funding. The comptroller thanks TLL for its comment. The matching funds evaluation criteria is one of many criteria the office is required by these rules to consider when evaluating applications. While it is an important factor for the office to consider because the use of matching funds will permit the office to leverage the impact of its funds, the comptroller anticipates that this factor will be weighted in notices of funds availability in such a way as to not disproportionately impact areas that historically have less access to sources of matching funds. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

EDS submitted a comment regarding the matching funds preference, noting that under federal guidance for Coronavirus Capital Projects Funds there is no matching funds requirement. EDS, however, did not make a recommendation regarding this issue. The comptroller notes that under the proposed rule an applicant is not required to match funds; the rule merely permits the comptroller to consider the existence of matching funds and provide a preference for applications that demonstrate the existence of such funds. Therefore, the comptroller does not believe changes to the proposed rule are needed based on this comment.

Rise Broadband commented on the matching funds preference seeking more detail on how allowable matching costs would be determined. The comptroller notes that the preference factors in proposed §16.40 are intended to provide notice of the *types* of factors the office will be required to consider when evaluating applications. The comptroller anticipates that greater detail regarding applicable preference factors will be included in individual notices of funds availability and its application guidance materials.

Many commenters raised concerns that proposed §16.40(b)(5) may unintentionally penalize rural areas and urged the comptroller to not consider cost effectiveness as an evaluation criterion. DETCOG commented that if a preference based on cost per recipient is implemented, rural areas would be greatly disadvantaged because they are sparsely populated, implying that the cost of broadband deployment per person would generally be unfavorable for rural projects. DETCOG noted that broadband implementation is critical for rural Texas to take advantage of educational opportunities and allow citizens to receive health service without having to travel great distances. Therefore, DETCOG recommended that rural households should be prioritized rather than penalized by the proposed rule. Several commenters echoed DETCOG's comments noting the discrepancy in costs per broadband recipient would automatically favor

more densely populated areas which enjoy a higher population per square mile and lower distances between homes. TLL also commented that the costs of broadband connection in densely populated areas are orders of magnitude lower than the cost to connect homes in rural areas and therefore that using project cost per recipient systematically disadvantages rural areas. TLL therefore recommended that the evaluation factors implemented by the proposed rules should be amended to not negatively impact rural areas. TEC agreed with other commenters, noting that the expansion of broadband services to rural, low-density areas is characterized by high capital and operational costs per recipient served and expressed concern that consideration of cost effectiveness should not prejudice rural communities. Therefore, TEC reiterated its support for an allocation of funding that does not prioritize the number of end-users served. Likewise, TTA also noted the potential for the proposed rule to negatively impact rural areas and urged the comptroller to take into account "rurality" as a preference factor. The comptroller agrees with the concerns expressed in these comments. Rural areas should not be systematically disadvantaged by the evaluation criteria adopted by the comptroller; however, the comptroller believes that using cost effectiveness as an evaluation metric is critical to ensuring that public funds are used prudently. Therefore, the comptroller declines to make changes to the proposed rule based on these comments. However, to balance the concerns raised by the commenters with the need for the comptroller to ensure that public funds are expended prudently, the comptroller adopts §16.40(b)(6) with changes to require the office to consider and permit the office to give preference to applications from rural areas where, because of population density, the cost of broadband expansion is disproportionately characterized by higher capital and operational costs.

The comptroller received a comment from Nextlink suggesting that the comptroller consider using a reverse-auction format as a mechanism to ensure cost effectiveness. The comptroller appreciates this comment but finds that it is outside the scope of the current rulemaking. Therefore, the comptroller declines to make changes to the rule based on this comment.

TCA submitted a comment recommending a change to the proposed rule to provide for the evaluation of applications based on additional factors including the number of unserved and underserved locations that would be connected as a result of a proposed project. The comptroller agrees with this comment. The comptroller adopts proposed §16.40(b)(5) with changes to include additional factors that the office must consider when evaluating the cost effectiveness of a proposed project. The rule as adopted will allow the office to consider the number of locations to be served as the result of a project as well as the proportion of unserved and underserved locations that would be connected as a result of the project as compared to the total number of serviceable locations in a designated area. The rule as adopted will ensure that the office is able to measure the impact of a proposed project by reference to how greatly the project will expand broadband services to unserved locations and alleviate the concern that the rule will disproportionately affect rural, less densely populated areas.

The comptroller received comments from AMA-TechTel, DETCOG, Rise Broadband, TCA and TTA regarding the community participation factor in proposed §16.40(b)(8). DETCOG expressed support for providing a preference to applications with evidence of community participation. Rise Broadband expressed concern that this preference factor might result in an un-level playing field and sought clarification regarding whether community letters in support of a project by a commercial provider would balance the apparent preference in favor of community involvement and participation. The comptroller cannot speculate about the relative merits of hypothetical future applications but notes that the purpose of the evaluation factor is to encourage broadband providers to consult and partner with community stakeholders when developing broadband infrastructure projects. The comptroller does not anticipate mandating or otherwise restricting the form that community involvement or participation should take. Other commenters, however, including AMA-TechTel, TCA, and TTA argued against the proposed rule. AMA-TechTel advocated for elimination of the criteria noting that the office already completed thorough and inclusive outreach efforts in developing the State Broadband Plan and that including it as a priority in the grant process would be unhelpful and inefficient. AMA-TechTel further argued that participation of community, non-profits, and cooperatives in a grant application would be unlikely to improve the quality of outcomes or reduce the cost of broadband deployment. TCA noted that applicants should be evaluated on objective, provider-neutral criteria and encouraged the comptroller to assign little weight to community involvement because community involvement is not required under federal guidance. TCA, therefore, recommended eliminating the proposed rule. The comptroller respectfully disagrees with these comments. The comptroller believes local community participation and support of an application is an important factor to consider when evaluating applications. Some commenters, including DETCOG and several East Texas county judges, noted concerns that providers should be discouraged or disallowed from selecting project areas that contain only profitable census blocks while leaving out more costly and less sustainable census blocks. The comptroller disagrees with these comments because the comptroller does not have the authority to regulate broadband service providers and may not affirmatively require providers to, for instance, group both profitable and less profitable locations together. However, the comptroller may, as it has here, adopt rules that encourage providers to obtain community input and participation by giving preference to applications that have such community participation. Such participation is important evidence that a proposed project takes into account subjective, local community broadband needs and is ostensibly designed to best meet the needs of the area.

TTA also commented in favor of deleting this evaluation criteria as unfairly favoring applications that involve noncommercial entities and noted that this potential preference may conflict with the preference for commercial providers established in House Bill 5. The comptroller disagrees that evaluating community participation conflicts with the commercial provider preference. The commercial provider preference established in House Bill 5 and encapsulated in these rules is limited to a mandatory priority between commercial and noncommercial provider applications seeking funding for the same designated areas. It neither requires the comptroller to provide a global preference for commercial provider applications, nor prohibits the comptroller from establishing additional, non-conflicting preferences between commercial providers. Finally, the proposed rules provide for a mandatory process to resolve overlapping areas in favor of commercial providers and thereby avoid any potential conflict. For the foregoing reasons, the comptroller declines to make changes to the proposed rule based on these comments.

Austin provided a comment regarding proposed §16.40(b)(9) which provides that the office may consider affordability of

broadband services in a designated area prior to the deployment of broadband services as a result of the project. Austin noted that affordability remains one of the primary barriers for people who do not use the internet. In its comment, Austin asserted that the criteria based on affordability should not be limited to a snapshot prior to deployments funded by the program but should also take into account affordability in the area as a result of a project. The comptroller agrees that affordability is a key challenge that must be overcome to ensure that all Texans have access to quality, high speed internet and notes that the proposed rules already permit the office to consider the consumer price of broadband services that applicant proposes to deploy as a result of the project. Therefore, the comptroller does not believe a change to the proposed rule is needed and declines to make changes to the proposed rule based on this comment.

TCA submitted a comment against inclusion of proposed §16.40(b)(9), arguing that consideration of the affordability of broadband services in a project area prior to the deployment of broadband services describes an impossibility because unserved locations do not have broadband service. The comptroller respectfully disagrees with this comment because an area eligible for funding could include both unserved and underserved locations, some of which have access to broadband service. The proposed rule is intended to relate to the affordability of broadband services in a designated area prior to deployment. However, the comptroller agrees that the language of the rule should be amended to clarify the intent of the rule. Therefore, the comptroller adopts the proposed rule with changes to clarify that the preference factor relates to the affordability of broadband services in the designated areas in which the proposed project is located.

The comptroller received two comments regarding proposed §16.40(b)(10) which provides that the office shall consider consumer price of broadband services that applicant proposes to deploy because of the project as an evaluation criterion. Gigabit recommended deletion of the subsection without further comment. The comptroller believes that access to affordable, high-speed internet is a key challenge that must be overcome; therefore, consideration of the consumer price for the broadband services that will be deployed as a result of a project is an important metric for the comptroller to evaluate. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

DETCOG commented in support of §16.40(b)(10) but added that the rule should state how the requirement would be enforced. The comptroller disagrees with this comment. As previously noted, the comptroller lacks authority to regulate broadband service providers. In addition, the proposed rule does not impose enforceable obligations on applicants but merely provides for evaluation criteria the comptroller is required to consider when reviewing applications. Thus, the comptroller declines to make a change to the proposed rule based on this comment.

AT&T noted that it is a strong proponent for affordable broadband but noted that it is against price freezes which would make broadband programs less sustainable for providers and ultimately depress private investment in broadband infrastructure. Therefore, AT&T expressed support of the evaluation criteria in proposed §16.40(b)(11) for providers to participate in federal programs that provide low-income consumers with subsidies for broadband services.

With respect to proposed §16.40(b)(13), the comptroller received a comment from TTA opining that the benefit of additional factors contained in a notice of funds availability (NOFA) should be weighed against the additional administrative burden imposed. Consequently, TTA recommended that any additional factors should be clearly delineated in the NOFA and that industry should be given an opportunity to respond on the merits and feasibility of any additional factors. The comptroller thanks TTA for raising this important issue. The comptroller agrees that stakeholder feedback and involvement in the process is critical to ensuring that the challenges of implementing an effective broadband program are met while also balancing the needs of the community and stakeholders; however, the comptroller finds that the comment is outside the scope of the current rulemaking and declines to make a change to the proposed rules based on this comment.

The comptroller received comments in that were generally in support of proposed §16.41, concerning the application protest process, from Lit Communities, OPUC, TCA, TEC, and Texoma. OPUC noted that it generally agreed with the application protest process but encouraged the comptroller to consider carve outs for the average citizen or taxpayer as a protesting party by allowing the office to consider their protests without placing the burden of proof on them to prove or disprove that a project is ineligible for an award and waiving the notary requirement for the average citizen or taxpayer protesting party. The comptroller disagrees with this comment. The proposed rule permits an interested party to protest the eligibility for an award based on whether a proposed project is within an eligible area. The burden placed on a protesting party is a low bar - a protesting party need only demonstrate, using publicly available data, that the project contains one or more addresses that are ineligible for award. In addition, the comptroller believes the requirement that a protesting party provide a notarized statement is not unduly burdensome. Consequently, the comptroller declines to make changes to the proposed rules based on this comment.

The comptroller received two comments from Lit Communities and Texoma noting that the proposed rule does not contain any penalty or disincentive for submitting fake or frivolous protests. Texoma recommended that the comptroller include penalties for filing frivolous protests including loss of the right to make future protests. The comptroller may not impose penalties as suggested because the comptroller lacks statutory authority to do so, nor may the comptroller bar a party from making a protest because the comptroller is statutorily required by Government Code, §490I.0106(f) to accept a protest from any interested party. For these reasons, the comptroller declines to make changes to the proposed rule based on these comments.

The comptroller received two comments from Lit Communities regarding proposed §16.41(c) in which they questioned whether the comptroller should expressly require street level data and GIS and shapefile data from both applicants and protestors, noting that there was no express rule provision requiring applicants to provide the same information required of protesting parties. The comptroller does not believe a change to §16.39, relating to application requirements, is needed. Proposed §16.39 gives the comptroller broad authority to prescribe the information required from applicants in its notices of funds availability or application instructions and already provides that an application must contain maps of the project area and locations to be served as well as provide a technical description of the project. Both street level data and GIS and shapefile data would fall within the ambit of these application requirements. While the comptroller anticipates that it will require applicants in its notices of funds availability and application instructions to provide street level data for

serviceable locations within a project area the comptroller will not be requiring GIS and shapefile data from applicants. Therefore, the comptroller adopts the proposed rule with changes to ensure that applicants and protesting parties are treated similarly by removing the requirement for protesting parties to provide GIS and shapefile data.

TCA also commented on proposed §16.41(c), expressing a concern that requiring a protesting party to provide address lists for customers raises privacy concerns and may understate provider service areas by reporting only locations of subscribers and not locations where broadband service providers offer broadband service. TCA recommended that the comptroller include language clarifying that the office will not require protesting parties to provide address or other information that discloses personal information regarding subscribers. The comptroller agrees with this comment. The comptroller adopts the proposed rule with changes to clarify that a protesting party is not required to provide customer information. This change will ensure that personal information regarding subscribers is not required to be submitted to the office while also ensuring that the office receives critical information that is needed to evaluate protests.

The comptroller received comments from TCA and Texoma on proposed §16.41(f) regarding the deadline for submitting an amended application after a successful protest. Texoma recommended that the deadline be extended from 10 days to 14 days, while TCA correctly noted that the resubmission deadline contained in §16.41(f) did not align with the resubmission period outlined by §16.36(f). The comptroller agrees with these comments. The comptroller adopts the proposed rule with changes to extend the resubmission deadline to 30 days to conform with the resubmission period found in §16.36(f).

The comptroller received several comments related to proposed §16.42, concerning awards; grant agreements. OPUC supported the rule as proposed. Other commenters, including AMA-TechTel, Lit Communities, TCA, and TTA expressed specific concerns related to the proposed rule.

In its comments, Lit Communities expressed a concern that the proposed rule would allow award decisions to be made at the sole discretion of the office and the decisions would not be subject to appeal or protest. Consequently, Lit Communities recommended that the comptroller consider establishing a separate body to evaluate and recommend awards. The comptroller disagrees with this comment. Through the proposed rules, the comptroller is establishing a framework for a competitive grant award process that balances the need for transparency and fairness with the need to expeditiously award grants. The comptroller does not believe that adding an additional layer of review to the grant award process adds sufficient value to counterbalance the added delay in making final award decisions. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

TTA also commented on proposed §16.42(b), recommending that the comptroller clarify that "other expenses" should include administrative, legal, and other reasonable expenses directly associated with a project. Similarly, TCA recommended that the comptroller add associated labor and make-ready costs as allowed expenses required to deploy broadband. The comptroller disagrees with these comments. The comptroller does not believe a change to the proposed rule is necessary because the cost accounting standards applicable to grants are dependent on the funding source and will be addressed in the applicable grant agreements. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

TCA further commented that the proposed rules could lead to substantial amounts of public funding being used to construct duplicative, publicly subsidized connections to locations within designated areas that already have access to high-speed broadband. Consequently, TCA recommended that the comptroller consider adding language to proposed §16.42(b) to expressly prohibit the use of funds to connect locations within a census block that are neither unserved nor underserved. The comptroller disagrees that the specific prohibitory language suggested by TCA is necessary. The comptroller anticipates that as part of the grant application process, applicants will be required to provide detailed information regarding the broadband project for which they are seeking funding, including, but not limited to, providing information about the overall project budget, the number of serviceable locations within the project area, and the proposed number of additional locations that will become served because of the project. The comptroller anticipates using this information as part of its evaluation process to ensure that public funds will be used in a manner that ensures the broadest expansion of broadband service in a cost-effective manner. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

AMA-TechTel, Lit Communities, TCA, and TTA commented on the requirement for an applicant to execute the grant agreement within thirty (30) days, arguing in favor of extending the period to as long as ninety (90) days. In addition, TTA proposed that the comptroller consider including language that would allow the comptroller to waive the rule or grant reasonable extensions upon a showing of good cause. Commenters expressed a concern that a grant could be denied simply because the parties are unable to fully execute the grant agreement within the 30-day grant execution period, noting that 30 days may not be sufficient for some applicants including those partnering with other entities who would first have to enter into a partnership agreement or governmental entities who may require additional time to get necessary approvals. The comptroller agrees with the concerns raised in these comments. While the comptroller anticipates that the majority of grant agreements should be fully executed within thirty (30) days, it recognizes that in some instances a longer period may be needed. The comptroller adopts proposed §16.42 with changes to allow applicants to request additional time to fully execute the grant agreement for good cause shown. The rule as adopted will ensure that applicants have sufficient time to review and execute the grant agreement and that grants will not be denied for failure to timely execute the agreement where good cause for the delay exists.

The comptroller received a comment from OPUC in support of requiring grant recipients to submit periodic reports to the office as outlined in proposed §16.43, noting that such reporting is necessary for transparency. The comptroller also received a comment from Lit Communities requesting the comptroller to provide clarification on the reporting data the comptroller may require for equity indicators, community engagement efforts and workforce plans and practices. The comptroller notes that the rule as written is intended to provide notice to recipients of the broad categories of information that may have to be reported to the comptroller to comply with federal reporting requirements. The comptroller anticipates that the form, content and required reporting information will be determined at a later date and therefore declines to make changes to the proposed rule based on this comment.

The comptroller received three comments from OPUC, TCA, and TTA in support of proposed §16.44, concerning records retention; audit. OPUC was generally supportive of the rule noting that records retention requirements were needed for transparency. TCA stated in its comment that it believed the comptroller should clarify in its rule the length of the grant agreement terms. TCA acknowledged that because differing projects might be built on differing timelines the rule need not specify a particular period but suggested that the grant agreement should extend to the promised date for completion reflected in an application. The comptroller disagrees with this comment as unnecessary because the grant term will be determined based on individual project requirements and will be set out with particularity in the negotiated grant agreement. In addition, TCA's proposal to use the promised completion date does not take into account unforeseeable delays that would necessitate extending the agreement term. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

TTA agreed that grant recipients should be required to maintain records and provide them to the comptroller upon request. However, TTA requested that the period for providing requested records be extended to sixty (60) days, noting that it may take additional time to produce the requested records. The comptroller disagrees with this comment because the comptroller believes that thirty (30) days is sufficient to produce requested records. The comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received several comments from OPUC, TCA, and TTA in support of allowing the comptroller to recoup funds under proposed §16.45 for failure of a grant recipient to perform its obligations under a grant; however, TCA noted that the provision should be better defined to identify the potential forfeitures and their triggers, expressing a particular concern in which the entirety of an entire grant award could be forfeited even where an applicant has substantially complied with its obligations. TCA therefore recommended that the rule be modified to require the comptroller to consider various factors including percentage of project completion, excusable delays or other force majeure events, and materiality of defaults, before deciding on whether a grant should be forfeited and in what amount. TCA noted that adopting the rule without changes may deter applicant participation due to a potentially massive risk of forfeiture of an entire grant even in circumstances where a recipient has substantially complied with its obligations. The comptroller agrees with the suggestion to consider the factors outlined in the comment when determining whether a grant should be forfeited and in what amount. Based on this comment, the comptroller adopts proposed §16.45 with changes to require the office to consider the percentage of project completion, excusable delays or other force majeure events, and materiality of defaults, before deciding on whether a grant should be forfeited and in what amount. The rule as adopted will maintain the comptroller's ability to recoup funds in a fair and transparent manner while assuring applicants that a grant will only be subject to forfeiture to the extent that a default is material and unexcused.

TTA expressed a further concern that forfeiture of funds and barring applicants from future grant consideration may not be a sufficient deterrent and therefore recommended that the comptroller consider language permitting the imposition of additional penalties other than forfeiture and disbarment for failure to perform under a grant agreement. The comptroller disagrees with this comment because the comptroller has no statutory authority to impose penalties. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller received an additional comment from Ms. Mari Robinson regarding proposed §16.45(c) relating to authority of the office to treat a failure to perform resulting in forfeiture of grant funds as cause for barring an applicant from future consideration for grant funds under the program. Ms. Robinson expressed concern that taking such an action may implicate due process concerns and recommended that the comptroller consider whether an appeals process should be adopted as part of the rule. The comptroller believes that barring an applicant from participation in the program would be an exceptional occurrence and that implementing an appeal process is not necessary. However, the comptroller notes that Government Code, §490I.0106(b) grants the office broad authority to establish eligibility and evaluation criteria for the program. Under that authority the comptroller may establish criteria which disqualifies an applicant from participating in the program. In addition, under the proposed §16.40(b)(2) the comptroller may also consider applicant experience, including past performance, when evaluating applications. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The comptroller also received a comment from Lit Communities questioning when the office would evaluate whether a grant recipient has defaulted on its obligations. The comptroller anticipates that it will make determinations regarding default as needed during the term of the grant agreement. Based on this comment, the comptroller adopts proposed §16.45 with changes to clarify that the office may make such determinations at any time during the grant agreement. The rule as adopted will provide greater clarity as to when the comptroller may exercise its authority evaluate grant recipient compliance obligations and to make default determinations.

The comptroller received a comment from OPUC in support of §16.46, concerning forms, agreeing that the comptroller should have the authority to lay out the requirements for how documentation must be submitted.

The new sections are adopted under Government Code, §490I.0109.

The new sections implement Government Code, Chapter 490I.

§16.30. Definitions.

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of at least thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband service--Internet service that delivers transmission speeds capable of providing a minimum download or upload threshold speed that are the greater of:

(A) a download speed of 25 Mbps or faster; and an upload speed of three Mbps or faster as established under Government Code, §490I.0101; or

(B) the upload or download threshold speeds for advanced telecommunications capability under 47 U.S.C. §1302 as adopted by the Federal Communications Commission and as published on the comptroller's website under Government Code, §490I.0101.

(4) Broadband development map--The map created under Government Code, §490I.0105.

(5) Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(6) Census tract--A cluster of census blocks consisting of small, relatively permanent statistical subdivisions of a county or statistically equivalent entity that can be updated by local participants prior to each decennial census as part of the U.S. Census Bureau's Participant Statistical Areas Program.

(7) Commercial broadband service provider--A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

(8) Designated area--A census block or other area as determined under §16.33 of this subchapter.

(9) Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service in designated areas determined to be eligible areas by the office under Government Code, §490I.0105.

(10) Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(11) Mbps--Megabits per second.

(12) Middle mile broadband service--The provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an Internet service provider to provide broadband service. The term does not include provision of Internet service to end-use customers on a retail basis.

(13) Non-commercial broadband service provider--A broadband service provider that is not a commercial broadband service provider.

(14) Office--The Broadband Development Office created under Government Code, §490I.0102.

(15) Project area--The area identified by an applicant in which the applicant proposes to deploy broadband service and consisting of the entirety of one or more contiguous designated areas that are eligible to receive funding under this subchapter.

(16) Unserved area--A designated area or location within a designated area that does not have access to broadband service.

(17) Underserved area--A designated area or location within a designated area that has access to broadband service but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.

§16.31. Notice of Funds Availability.

(a) The office shall publish in the *Texas Register* a notice that a notice of funds availability will be published on the *Texas.gov eGrants* website. The comptroller may make available a copy of the notice of funds availability on the comptroller's website. For the purposes of these rules, the date the notice of funds availability is issued is the first day the notice is published in the *Texas.gov eGrant's* website.

(b) The notice of funds availability published on the *Texas.gov eGrants* website shall include:

(1) the total amount of grant funds available for award;

(2) the minimum and maximum amount of grant funds available for each application;

(3) eligibility requirements;

(4) application requirements;

(5) award and evaluation criteria; and

(6) the date by which applications must be submitted to the office;

(c) The notice may include:

(1) limitations on the geographic distribution of grant funds;

(2) the anticipated date of award; and

(3) any other information the office determines is necessary for award.

§16.32. Federal Funding; Conflict with Laws, Rules, Regulations, or Guidance.

(a) If federal funding is used to make an award, the office may establish eligibility and program requirements and preferences, and make award decisions, based upon any criteria required by federal law, regulation, or guidance applicable to the type of funding used to make the award.

(b) If a state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award conflicts with this subchapter, the state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award prevails over this subchapter to the extent necessary to avoid the conflict.

§16.33. Designated Area Eligibility.

(a) For the purpose of developing the broadband development map, the scope of a designated area in this state shall consist of a census block, unless the comptroller determines that using a census block is not technically feasible or data is not available at the census block level.

(b) If the comptroller determines that developing the broadband development map at the census block level is not feasible, the comptroller shall develop the map using the smallest level for which information is available from the Federal Communications Commission. If information from the Federal Communications Commission is not available or not sufficient for the office to create or update the map, the office may use information provided by a political subdivision or broadband service provider to develop the map.

(c) The comptroller shall determine whether a designated area is eligible for funding based on the broadband development map, if available, or if not available may:

(1) Use a map produced by the Federal Communications Commission that complies with Government Code, §490I.0105(q); or

(2) Use information available from the Federal Communications Commission, political subdivisions of this state, or broadband service providers, to make a determination regarding whether a designated area is eligible for funding.

(d) A designated area is eligible for funding under the program if:

(1) fewer than 80% of the addresses in the designated area have access to broadband service; and

(2) the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area.

(e) A designated area is ineligible for funding under the program if:

(1) 80% or more of the addresses in the designated area have access to broadband service; or

(2) the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area.

§16.34. Designated Area Reclassification.

(a) A broadband service provider or a political subdivision of this state may petition the office to reclassify a designated area as eligible or ineligible for funding. A petition seeking reclassification of a designated area shall be submitted to the office not later than the 60th day after the broadband development map is published on the comptroller's website. The office shall provide notice of the petition to each impacted political subdivision, and each broadband service provider that provides broadband service to the designated area, if known to the office, and post notice of the petition on the comptroller's website. For the purposes of this section, the office may provide notice to an impacted political subdivision by posting the petition on the comptroller's website and an impacted political subdivision shall be deemed to have received notice on the date the notice of the petition is posted on the comptroller's website.

(b) Not later than the 45th day after the date that an impacted political subdivision or a broadband service provider that provides broadband service to the designated area receives a notice of a petition under subsection (a) of this section:

(1) an impacted political subdivision may provide information to the office showing whether the designated area should or should not be reclassified; and

(2) each broadband service provider that provides broadband service to the designated area shall provide information to the office showing whether the designated area should or should not be reclassified.

(c) Not later than the 75th day after the date that a broadband service provider that provides broadband service to the designated area receives the notice of a petition under subsection (a) of this section, the office shall determine whether to reclassify the designated area and update the map as necessary.

(d) The office shall consider the following criteria in making a determination of whether to reclassify a designated area under subsection (c) of this section:

(1) an evaluation of Internet speed test data and information on end user addresses within the designated area;

(2) community surveys regarding the reliability of Internet service within the designated area, where available;

(3) information related to the loss of funding from the state or federal government through forfeiture or disqualification; and

(4) other information the office determines may be useful in determining funding eligibility.

(e) The office may reclassify a designated area that is classified as ineligible for funding on account of the existence of state or federal funding as eligible for funding if:

(1) funding from the state or federal government is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the designated area otherwise meets the qualifications to be eligible for funding.

(f) A determination made by the office under this subsection is not a contested case for purposes of Government Code, Chapter 2001.

(g) If after making an award the office determines that at the time of making the award a designated area was not eligible to receive funding under this subchapter, the office may rescind the award and the grant recipient shall be required to return any grant funds that were awarded. The office shall reduce the amount required to be returned under this subsection if the office determines, in its sole discretion, that the grant funds or any portion thereof were expended in good faith.

§16.35. Program Eligibility Requirements.

(a) Eligible participants of the program include:

(1) political subdivisions of this state;

(2) commercial broadband service providers;

(3) non-commercial broadband service providers; and

(4) partnerships between political subdivisions of this state, commercial broadband service providers, noncommercial broadband service providers, or any combination thereof.

(b) The office may not award grant funds to an otherwise eligible participant under subsection (a)(3) of this section if a commercial broadband service provider has submitted an eligible application for the same area.

(c) An entity that does not provide information requested by the office under Government Code, §490I.0105, is not eligible to participate in the program and the office may not award grant funds to a broadband service provider that does not report information requested by the office under Government Code, §490I.0105.

(d) For the purposes of this subchapter, a partnership consisting of a political subdivision, commercial broadband service provider, or a non-commercial broadband service provider that includes at least one commercial broadband service provider shall be deemed to be a commercial broadband service provider.

§16.36. Application Process Generally.

(a) No awards for funding will be disbursed by the office except pursuant to an application submitted in accordance with this subchapter.

(b) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(c) Prior to publication of application information pursuant to Government Code, §490I.0106(e), the office may undertake an examination to determine whether the application appears on its face to comply with applicable program requirements. The office may not accept an application that does not appear to comply with applicable program requirements on its face.

(d) The office shall publish on its website information from each accepted application, including the applicant's name, the project area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. The information will remain on the website for a period of at least 30 days before the office makes a decision on the application.

(e) During the 30-day application protest period described by subsection (d) of this section for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office. A protest of an application must be submitted as provided under §16.41 of this subchapter.

(f) Notwithstanding any deadline for submitting an application, if the office upholds a protest on the grounds that one or more of the locations in a project area have access to broadband service, the applicant may resubmit an amended application without the challenged locations not later than 30 days after the date that the office upheld the protest. An amended application may not include additional areas or locations not already included in the original application.

(g) If the office upholds a protest and the applicant resubmits an application in accordance with subsection (f) of this section, the resubmitted application is not subject to further protest.

(h) For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the designated area subject to protest and also includes a broadband service provider that is not located in the designated area but who proposes to provide broadband service in the designated area.

§16.37. Overlapping Applications or Project Areas.

(a) Except as provided under §16.38 of this subchapter, if at the close of the application period one or more applications or project areas overlap one or more other applications or project areas, relative to one or more unserved or underserved areas, including census blocks, census tracts, shapefile areas, individual addresses, or portions thereof, the office shall inform the impacted applicants of the project area overlap prior to publishing information regarding the applications as required by §16.36 of this subchapter and provide the impacted applicants with an opportunity to resolve the overlapping unserved or underserved area.

(b) Applicants working to resolve an instance of overlapping applications or project areas shall jointly notify the office of such efforts not later than the 10th business day after the first day of the application protest period.

(c) Applicants who have provided notice under subsection (b) of this section may submit their proposed resolution to the office and may amend their application not later than the last day of the application protest period. The proposed resolution between impacted applicants may not result in the addition of partners to a previously submitted application or project area nor the expansion of an application's project area.

(d) If the impacted applicants do not resolve the overlapping unserved census blocks, census tracts, shapefile areas, individual addresses, or portions thereof, each impacted application shall be evaluated independently; and the office shall:

(1) score each impacted application and the application receiving the highest score shall proceed to grant funding consideration with its project area boundary intact.

(2) remove the overlapping project area from the lower scored applications and provide notice to the impacted applicants that the overlapping project areas have been removed from the application.

(e) If removing overlapping project areas as provided under subsection (d) of this section results in the remaining project area retaining less than 50% of the original project area, the office may remove the application from grant funding consideration. The office may use any reasonable method to calculate the remaining project area.

(f) If the office removes an overlapping project area from an application, an applicant may amend and resubmit an application without the overlapping area if:

(1) The remaining project area is greater than 50% of the original project area; or

(2) The remaining project area is less than 50% of the original project area and the office does not remove the application from grant funding consideration under subsection (e) of this section.

(g) If an amended application without the overlapping areas is not received by the office by the 10th business day after receiving notice under subsection (d)(2) of this section, the office may remove the application from grant funding consideration.

§16.38. Special Rule for Overlapping Project Areas in Noncommercial Applications.

(a) If a commercial and noncommercial broadband service provider submit an eligible application to provide broadband service access to the same project area, or a portion thereof, the office shall inform the noncommercial provider of the overlap and the noncommercial provider shall be required to submit an amended application eliminating the areas of overlap for which the commercial provider proposes to provide expanded broadband service access.

(b) If a noncommercial broadband service provider required to amend its application under subsection (a) of this section does not submit an amended application to the office by the 30th day after receiving notice of the overlapping areas, the office may remove the application from grant funding consideration.

§16.39. Application Requirements.

(a) As set forth in greater detail in the notice of funds availability or the application instructions prescribed by the office, each application shall include:

(1) applicant information, statement of qualifications, and partnerships;

(2) maps of the project area and locations to be served;

(3) a technical description of the project;

(4) project budget(s), matching funds, costs, and proof of funding availability;

(5) proposed services, marketing, adoption, and community support;

(6) information required by the notice of funds availability; and

(7) any other information or documentation that the office may require.

(b) During the application process, the office may require an applicant to submit additional information the office determines is necessary to make an award determination.

§16.40. Evaluation Criteria.

(a) The office shall prioritize applications that:

(1) expand access to and adoption of broadband service in designated areas that are eligible for funding in which the lowest percentage of addresses have access to broadband service; and

(2) expand access to broadband service in public and private primary and secondary schools and institutions of higher education.

(b) In making award decisions, the office shall consider and may give preference to applications based upon the following evaluation criteria:

(1) application participant(s) experience;

(2) technical specifications including broadband transmission speeds (Mbps upload and download) that will be deployed as a result of the project;

(3) estimated project completion date;

(4) matching funds amount, percentage, and source of matching funds;

(5) cost effectiveness and overall impact as measured by the total project cost, the total number of prospective broadband service locations to be served by the project, the proportion of unserved and underserved locations to be served by the project compared to the number of serviceable locations with the designated area, the proportion of recipients to be served by the project compared to the population in the designated area, and the project cost per prospective broadband service recipient;

(6) geographic location including, but not limited to, designated areas located in rural areas where because of population density the cost of broadband expansion is characterized by disproportionately high capital and operational costs;

(7) the number and percentage of unserved and underserved households and businesses in the project area;

(8) community, non-profit, or cooperative involvement or participation in the project;

(9) affordability of broadband services in the designated areas in which the proposed project is located prior to the deployment of broadband services as a result of the project;

(10) consumer price of broadband services that applicant proposes to deploy as a result of the project;

(11) participation in federal programs that provide low-income consumers with subsidies for broadband services;

(12) small business and historically underutilized business involvement or subcontracting participation; and

(13) any additional factors listed in a notice of funds availability published by the office.

§16.41. Application Protest Process.

(a) The protesting party bears the burden to establish that an applicant or project is ineligible for an award or should not receive an award based on the criteria prescribed by the office.

(b) Protests shall be submitted electronically in the manner and on the forms prescribed by the office and shall be accompanied by all relevant supporting documentation.

(c) As set forth in greater detail in the application instructions prescribed by the office, each protest shall, at a minimum, include:

(1) a notarized statement verifying that the protest and submitted information are true and submitted in good faith;

(2) data from the broadband development map, if available, or if not available the current Federal Communications Commission (FCC) Form 477 or equivalent;

(3) a detailed map, using the project area map(s) submitted by the applicant, delineating the general challenged areas and indicating where the protested serviceable locations are within the proposed project area; and

(4) street level data for broadband serviceable locations within the challenged area including, but not limited to, the number of serviceable locations within the proposed project area and the minimum and maximum speeds those serviceable locations are able to receive.

(d) The office shall review the protest and make a written determination as to whether the protest should be upheld.

(e) If the office upholds a protest, an applicant may amend and resubmit an application without the challenged locations and re-scope the application or project area.

(f) If an amended application without the challenged areas is not received by the office by the 30th day after receiving the determination under subsection (d) of this section, the office may remove the application from grant funding consideration.

(g) A determination made by the office under this section is not a contested case for purposes of Government Code, Chapter 2001.

§16.42. Awards; Grant Agreement.

(a) All award decisions shall be made at the sole discretion of the office and are not appealable or subject to protest.

(b) Awards for grant funds awarded to applicants under this subchapter may only be used for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service.

(c) A grant recipient shall have 30 days from the date of award to negotiate and sign the grant agreement. The comptroller may extend the deadline to fully execute the grant agreement upon a showing of good cause by the grant recipient(s). If the grant agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award of the grant agreement or the extended deadline date, the office may rescind the award.

§16.43. Reporting.

(a) Grant recipients shall submit to the office periodic reports for each funded project for the duration of the grant agreement. The frequency, format and requirements of the reports shall be determined at the discretion of the office.

(b) Grant recipients, upon request from the office, shall provide:

(1) project and expenditure reports, including but not limited to, expenditures, project status, subawards, civil rights compliance, equity indicators, community engagement efforts, geospatial data, workforce plans and practices, and information about subcontracted entities; and

(2) performance reports, including but not limited to project outputs and outcomes.

(c) The office, at its sole discretion and at any time, upon reasonable notice, may request any additional data and reporting information that the office deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.44. Records Retention; Audit.

(a) Grant recipients must maintain all financial records, supporting documents, and all other records pertinent to the project or award for the later of:

(1) five years following the submission of a final report;

(2) if any litigation, claim, or audit is started, or any open records request is received, before the expiration of the five-year records retention period, one year after the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it; or

(3) the period required by the specific federal funding source applicable to the grant.

(b) At any time during the grant agreement and for a period of five years after the project has been completed, the office or its de-

signee may, upon reasonable notice, request any records from or audit the books and records of a grant recipient to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement and this subchapter. Grant recipients shall provide the requested records or information to the office not later than 30 days after a written request is made by the office.

§16.45. Failure to Perform.

(a) A grant recipient shall forfeit up to the amount of the grant funds received if the office determines the grant recipient has failed to perform, in material respect, the obligations established in the grant agreement. The office may make such a determination at any time during the grant agreement. The amount forfeited shall be determined at the sole discretion of the office taking into account factors including, but not limited to, the amount of the project that was timely completed, excusable delays or other force majeure events, and the materiality of default(s).

(b) A grant recipient shall not be required to forfeit the amount of the grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.

(c) A failure to perform resulting in forfeiture of grant funds may be cause for the office to bar an applicant from future consideration for grant funds under this program.

§16.46. Forms; Notices.

(a) Unless otherwise required by law, the office may prescribe all forms or other documents required to implement this subchapter and may require that the forms or other documents be submitted electronically.

(b) Any notice required by these rules to be sent by the office may be provided electronically and the office is entitled to rely on an email address provided by an applicant, grant recipient or other person, including a political subdivision or broadband service provider, for all purposes relating to notification. Applicants and grant recipients must provide an email address that is designated for receipt of notices from the office.

(c) If notice cannot be sent electronically, the office shall provide notice by regular U.S. Mail and the office is entitled to rely on the mailing address currently on file for all purposes relating to notification.

(d) Service of notice by the office is complete and receipt is presumed on:

(1) the date the notice is sent, if sent before 5:00 p.m. by electronic mail;

(2) the date after the notice is sent, if sent after 5:00 p.m. by electronic mail; or

(3) three business days after the date it is placed in the mail, if sent by regular U.S. Mail.

(e) When multiple recipients receive notice under §16.34(a) of this subchapter resulting in more than one date of service as determined under subsection (d) of this section, the date that a broadband provider receives notice for the purpose of §16.34 of this subchapter is the latest service date for that notice.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Victoria North
General Counsel for Fiscal and Agency Affairs
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to §§380.8501, 380.8703, 380.8751, and 380.9503 with changes to the proposed text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4419). The amended rules will be republished.

TJJD also adopts new §380.9510 and amendments to §§380.8521, 380.8702, 380.9520, 380.9551, 380.9555, 380.9557, and 380.9729 without changes to the proposed text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4419). The new and amended rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new amendment to §380.8501 corrects an error in punctuation.

The new amendments to §380.8703 include correcting an error in punctuation and making a non-substantive grammatical change. The new amendments to §380.8751 include correcting an error in punctuation and making non-substantive changes related to capitalization.

The new amendments to §380.9503 include specifying that the definition of *Possession* does not require an item to be on or about a youth's person and clarifying that, in situations when a Level II due process hearing is not required, a written description of the incident (rather than a formal incident report) must be prepared when imposing disciplinary consequences for a youth in a high-restriction facility.

SUMMARY OF CHANGES

In addition to the change mentioned above, the amended §380.8501, concerning Definitions, deletes the definitions for the terms *Indicator, Objective, Program Completion,* and *Stage;* adds definitions for the terms *Program Completion Criteria* and *Risk Level;* modifies the definitions of the terms *Community Reentry/Transition Plan, Home Placement, Initial Placement,* Release *under Supervision, Revocation Offense,* and *Transition;* and includes non-substantive revisions to the definitions of the terms *Discharge, Final Decision Authority, Most Serious of the Relevant Offenses, Parole Status,* and *Transfer.*

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

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

In addition to the changes mentioned above, the amended §380.8703, concerning Rehabilitation Program Stage Requirements and Assessment, makes numerous changes in several areas.

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

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

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

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

In addition to the changes mentioned above, the amended §380.8751, concerning Specialized Treatment, makes changes relating to the requirement to participate in or complete specialized treatment including adding that, for youth who have specialized treatment requirement as part of transition or release criteria, a youth may qualify for the transition or release *if a designee of the executive director with appropriate expertise determines that the youth has made sufficient progress toward treatment goals or that the goals can be addressed in a non-high-restriction setting.*

The amended §380.8751 also removes the requirement for intensive treatment programs to be delivered in a setting where all youth in the program reside in a common dormitory and where the milieu is designed to address the specialized need on a continuous basis; adds that treatment in such programs is generally delivered in specialized groups; specifies that moderate-intensity treatment programs are *generally* delivered in specialized groups; removes the statement that such programs include individual counseling, and renamed these programs as *moderate-intensity* (rather than *short-term)* treatment programs; clarifying that TJJD's specialized treatment programs are *designed* (rather than *shown)* to reduce risk to reoffend; clarifies that, when a youth cannot be provided the type of specialized program designed in this rule for the youth's assessed need level, the youth will be provided with the most appropriate alternate form of *intervention* (rather than *specialized intervention);* removes a provision stating that the orientation and assessment unit is where assessments of specialized treatment needs are conducted; removes a provision stating that upon arrival at the initial placement is when the youth's comprehensive plan for specialized treatment is completed; adds that the mental health needs assessment and intellectual disability diagnosis is provided by *mental health* staff (rather than *psychology or psychiatry* staff); specifies that youth with a moderate mental health need are placed at a facility offering the necessary clinical *and/or* psychiatric (rather than clinical *and* psychiatric) support;

modifies the descriptions of youth with a low mental health need or no mental health need to be based on whether the youth requires follow-up mental health or psychiatric services, *regardless of whether the youth has a diagnosis;* adds that a *mental health professional* (rather than only a *psychologist)* may refer a youth for a determination of need for capital and serious violent offender treatment, and that the determination of need is based on a *clinical* (rather than *psychological)* assessment; adds that the assessment of need for substance use services is conducted by *mental health staff or a chemical dependency counselor* (rather than a *psychologist or mental health professional);* and adds that youth are provided specialized aftercare as needed and as available.

In addition to the changes mentioned above, the amended §380.9503, concerning Rules and Consequences for Residential Facilities, makes numerous changes in several areas.

Changes relating to rule violations include the following: 1) adding that, for disciplinary purposes, directing someone to commit a rule violation is treated the same as committing that violation; 2) adding a definition for "direct someone to commit" a violation; 3) changing the definitions of *Assault of Youth (No Injury)* and *Assault of Staff (No Injury)* to require intent to cause injury and to no longer be limited to making unauthorized physical contact; 4) changing the definition of *Escape* to be limited to high-restriction facilities (rather than applying also to medium-restriction facilities); 5) adding *Unauthorized Absence* as a major rule violation, which means leaving a medium-restriction facility without permission or failing to return from an authorized leave; 6) clarifying that *Attempted Escape* requires that youth have a specific intent to escape; 7) adding *Possessing, Selling, or Attempting to Purchase Ammunition* as a major rule violation; 8) modifying the definition of *Possession of a Weapon* to include selling or attempting to purchase a weapon; 9) adding *Tampering with Monitoring Equipment* to the list of major rule violations; 10) adding *Unauthorized Physical Contact with Another Youth (No Injury)* and *Unauthorized Physical Contact with Staff (No Injury)* as minor rule violations; 11) adding that the violation involving repeated non-compliance with staff applies when a youth fails to comply with a monthly requirement twice in a *60-day period* (rather than a 90-day period); 12) clarifying that several rule violations contain the element that the youth intentionally*, knowingly, or recklessly* engaged in the prohibited conduct (rather than doing so only intentionally, or in some cases, intentionally *and* knowingly or recklessly); and 13) clarifying that the violations *Sexual Misconduct* and *Tampering with Monitoring Equipment* contain the element that the youth intentionally *or* knowingly (rather than intentionally *and* knowingly) engaged in the prohibited conduct.

Changes in §380.9503 relating to disciplinary consequences include the following: 1) removing the list of specific disciplinary consequences and adding a list of types of discipline that are prohibited; 2) adding a list of examples of types of discipline that may be used; 3) adding a requirement for TJJD to establish each specific disciplinary consequences in writing in its procedural manuals; 4) adding that a consequence may be imposed only if it is established in writing before the occurrence of the conduct for which the consequence is being issued; 5) specifying that a Level II due process hearing is required before imposing a consequence that materially alters a youth's living conditions and that TJJD will specify in its procedural manuals which consequences require this hearing; 6) adding that consequences requiring a Level II hearing are considered major consequences; 7) specifying the amount of due process required before issuing a consequence if a Level II hearing is not required; 8) specifying that *all* disciplinary consequences (rather than just certain minor consequences) must be reviewed for policy compliance and that the reviews must be conducted within three calendar days; and 9) adding that the staff member reviewing discipline for policy compliance shall not be the staff member who issued the discipline.

Additional changes in §380.9503 include the following: 1) adding a definition for the term *Possession;* 2) adding that the term *Attempt to Commit* requires that youth have *specific intent* to commit a rule violation and engage in conduct that amounts to more than mere planning *that tends but fails to effect the commission of the intended rule violation;* 3) clarifying that an incident report is not proof that a youth committed a rule violation and that rule violations are considered proven only through a Level I or Level II due process hearing; 4) adding that an incident report cannot be appealed or grieved, but discipline that results from an incident report may be appealed or grieved; 5) clarifying that youth may appeal *any* consequence (rather than major consequences) issued through a Level II hearing; 6) specifying that youth in high-restriction facilities may grieve *any consequence issued without a Level II hearing* (rather than minor consequences); 7) adding that youth in medium-restriction facilities may appeal any consequences issued through a Level III hearing, in accordance with §380.9557; 8) removing the requirement to begin an investigation into certain alleged rule violations within 24 hours; 9) removing a reference to which staff member decides to hold a Level II hearing--however, requests to hold such hearings are addressed in §380.9555; 10) adding that formal incident reports are written for alleged rule violations as required by internal operational procedures rather than specifying the instances in which they must be written; 11) removing the requirement for a youth to be provided a copy of any incident report prepared for an alleged rule violation; 12) removing the requirement for rules of conduct to be physically posted in facilities; 13) removing a statement about issuing more than one consequence for a violation; 14) removing a provision concerning the multidisciplinary team's authority to reduce, extend, or modify certain privilege suspensions--however, §380.9555 addresses the treatment team's ability to reduce or suspend the imposition of a consequence for violations proven in a Level II hearing; 15) removing a provision allowed requirements in this rule to be restated or adapted to accommodate a particular program; 16) removing a statement concerning the possibility of repeated violations of the same rule leading to more serious consequences; 17) removing a reference to a non-disciplinary placement option (i.e., placement in the Redirect Program); and 20) removing definitions for terms that will no longer be used in the rule and a term for which a definition is unnecessary.

New §380.9510, concerning Intervention Program, includes certain elements of repealed §380.9517 and §380.9535, as well as new content. This new rule establishes three levels of intervention within an overarching behavior management program. In some cases, youth may be moved between levels of the program based on their conduct while in the program. The moderate and intensive levels of the program will require a rule violation proven through a Level II due process hearing before a youth can be placed at that level.

The amended §380.9520, concerning Cooling-Off Period for Youth Out of Control, changes both the maximum duration of segregation for youth in TJJD institutions to 90 minutes (rather than 55 minutes) and the maximum duration of segregation for

youth in TJJD halfway houses to 90 minutes (rather than two hours).

The amended §380.9551, concerning Level I Hearing Procedure, clarifies that, except in certain limited circumstances, a Level I hearing on any allegation must be *requested* (rather than scheduled) as soon as possible but no later than seven days after the date of the alleged offense, excluding weekends and holidays; clarifies that a hearing examiner may direct a Level I hearing to be held in a location other than the community where the alleged rule violation occurred provided the examiner *determines that doing so will not deprive the youth of his/her due process rights;* adds that, with the consent of the parties involved, witnesses may appear via telephone or video conference unless the hearing examiner determines that doing so will deprive the youth of his/her due process rights; and adds that, if a witness appears via telephone or video conference, all required participants must be able to simultaneously hear one another.

The amended §380.9555, concerning Level II Hearing Procedure, makes numerous changes in several areas.

Changes relating to requesting and scheduling the hearing include the following: 1) removing that, when a youth in a residential facility is alleged to have committed a major rule violation or a minor rule violation requiring a security referral, an investigation into the alleged violation must be started within 24 hours after the alleged offense, completed within 24 hours after the time started, and conducted by a staff member other than the one who reported the alleged violation; 2) removing the requirement that a decision on whether to pursue a Level II hearing must be made within 24 hours after the completion of an investigation; 3) adding that the appropriate staff person, *as specified in TJJD procedural manuals,* must request permission to schedule a hearing; 4) adding that a Level II hearing must be *requested and scheduled* (rather than conducted) as soon as practical but no later than seven days, excluding weekends and holidays, after the alleged violation *or discovery of the alleged violation;* and 5) removing the five-day timeframe for Level II hearings involving youth being held in a security unit due to potential interference with a pending Level II hearing;

Changes to §380.9555 relating to the disposition phase of the hearing include the following: 1) adding that the youth will be given the opportunity to present evidence of extenuating circumstances; 2) adding that a finding of extenuating circumstances does not prohibit placement of a youth in the intervention program under §380.9510, but the admission review shall take the finding into account; 3) adding that, if extenuating circumstances are found, the youth may not be assigned *any consequence designated as a major consequence in accordance with §380.9503* (rather than the requested disciplinary dispositions or any other major consequences); 4) clarifying that, during disposition, if no extenuating circumstances are found, the hearing manager must make *the disposition finding the youth was given notice of* (instead of the disposition recommended by staff); 5) removing a statement regarding the appropriate administrator's approval of a hearing manager's decision to transfer a youth; 6) removing a statement regarding the approval by facility administration of a hearing manager's decision to demote a youth's stage in the rehabilitation program; and 7) adding that a hearing manager's decision to impose a disciplinary consequence is final, subject to appeal, but a youth's treatment team may reduce or suspend the imposition of the consequence if warranted.

Additional changes to §380.9555 include the following: 1) adding that a Level II hearing is required before placing a youth in the *moderate or intensive level of the intervention program* (rather than in the Redirect Program); 2) clarifying that a Level II hearing is required before transferring an *institutional-status* youth who was initially at a medium-restriction facility to a high-restriction facility for non-disciplinary reasons; 3) adding that the criteria for placing a youth in the *moderate or intensive level of the intervention program* (rather than placing a youth in the Redirect Program) include finding that the youth committed an eligible rule violation; 4) clarifying that a hearing manager must find that a youth committed an eligible rule violation and that there are not extenuating circumstances in order to have contraband money *seized and* placed in the student benefit fund; 5) adding that, if a youth hires his or her own counsel, no advocate will be appointed; 6) clarifying that, not later than 24 hours before a hearing, the youth and the youth's advocate must be given *written notice* of the proposed action to be taken and *written notice and copies of* the evidence to be relied upon; 7) adding that video created by TJJD is generally considered "readily available" and shall be shown to the youth if used as evidence during a hearing; 8) clarifying that a hearing may be held by conference call or *videoconference;* 9) adding that, when a hearing is held by conference call *or videoconference,* all required participants must be able to simultaneously hear one another; 10) removing the requirement for the hearing manager to determine that holding a hearing by conference call will not deprive the youth of his/her due process rights; 10) removing a provision stating that, if a youth waives his/her presence, the hearing may be conducted by teleconference, which conflicted with an existing provision allowing any hearing to be held by teleconference; 11) specifying that youth in all contract placements (whether secure or non-secure) must be given the hearing packet at least 24 hours before the hearing; 12) adding that a youth's failure to testify shall not create a presumption *or inference* against the youth; 13) clarifying that a victim who appears as a witness should be provided a waiting area where he/she is not likely to come in contact with the youth *or the youth's parent/guardian* except during the hearing; and 14) replacing one instance of the term *parent(s)* with *parent/guardian.*

The amended §380.9557, concerning Level III Hearing Procedure makes numerous changes in several areas.

Overall changes to the rule include the following: 1) dividing the procedures into those to be used when determining admission to or extension in the security program and those to be used when determining disciplinary consequences; and 2) removing references to *minor* disciplinary consequences and explaining which disciplinary consequences can be imposed through this hearing type.

Changes to §380.9557 relating to appeals involving disciplinary consequences include the following: 1) clarifying that, if it is determined that *there were not reasonable grounds to believe* the youth committed the violation (instead of determining that the youth *did not commit* the violation), *the fact that the violation was overturned will be documented appropriately* (instead of stating that the youth's behavioral record will be updated); and 2) adding that, if it is determined that the youth committed the violation but *the imposed disciplinary measure* (instead of the disciplinary decision) was inappropriate, that fact *will be documented appropriately* (instead of stating only that the violation will remain on the youth's behavioral record) and the appeal authority shall determine some form of equitable relief for a youth who has started or completed serving the disciplinary measure and may impose a different disciplinary measure if the youth has not yet started serving the disciplinary measure.

The amended §380.9729, concerning Directives to Apprehend, adds that a directive to apprehend may be issued when a youth has an unauthorized absence from a halfway house or has failed to comply with the conditions of placement and adds that, when TJJD issues a directive to apprehend, TJJD may notify the Texas Missing Persons Clearinghouse and the National Center for Missing and Exploited Children. If the youth is at high risk for victimization due to human trafficking, sexual assault, exploitation, abuse, or neglectful supervision, these notifications must be made.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 1. DEFINITIONS

37 TAC §380.8501

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8501. Definitions.

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

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

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

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

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

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

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

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

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

(9) Home Placement--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian or in an independent living arrangement (excluding contract independent living programs).

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

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

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

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

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

(A) an offense which carries a determinate sentence;

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

(C) the offense which requires the highest facility restriction level;

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

(E) the most recently adjudicated offense.

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

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

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

(B) felony against a person;

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

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

(18) Program Completion Criteria--specific requirements established by rule that entitle a youth to parole when met.

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

(20) Release under Supervision (or Release)--the act of placing a youth on parole status under TJJD supervision.

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

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

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

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

(25) Transfer--a movement of a sentenced offender to the TDCJ - Correctional Institutions Division or TDCJ - Parole Division.

(26) Transition--the act of moving a youth from a high-restriction facility to a medium-restriction facility based on the youth's progress in the rehabilitation program. Transition does not result in the youth being placed on parole status.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. PLACEMENT PLANNING

37 TAC §380.8521

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8702, §380.8703

STATUTORY AUTHORITY

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

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

§380.8703. Rehabilitation Program Stage Requirements and Assessment.

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

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

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

(d) General Themes in the Rehabilitation Program.

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

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

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

(B) understanding and use of therapeutic tools;

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

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

(E) reducing risk factors and increasing protective factors.

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

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

(e) Stage Assessment.

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

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

(3) The parent/guardian must be given an opportunity to provide input to be considered at each stage assessment.

(4) As a result of a stage assessment, the youth is assigned to the most appropriate stage. Youth may be assigned to a stage that is more than one level higher than the current stage, if appropriate.

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

(6) Youth may not be assigned to a lower stage, except:

(A) when it is determined that behavior proven at a Level II due process hearing held in accordance with §380.9555 of this chapter indicates the youth no longer meets the requirements of the current stage assignment; or

(B) in accordance with subsection (g) of this section.

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

(8) The youth and the youth's parent/guardian are notified of the results of the stage assessment.

(f) Requirements for Stage Promotion.

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

(A) reviewing the youth's own unique risk and protective factors with the case manager;

(B) discussing the youth's progress toward goals with staff;

(C) working on case plan objectives with the case manager; and

(D) participating in the following other areas of programming:

(i) treatment and intervention activities;

(ii) academic and workforce development programs; and

(ii) application of learned skills in daily behavior.

(2) Stage 2--this stage focuses on healthy connection and the ability to make repairs after relational harm. Youth on this stage are moving beyond the pre-contemplation stage of change to accept that changes are needed to improve their ability to be successful in the future. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) exploring personal risk and protective factors, including those related to TJJD commitment;

(B) sharing plans for community reintegration with the youth's family, community supports, or adult mentor;

(C) exploring patterns in thoughts, feelings, attitudes, beliefs, and values;

(D) making progress towards personalized goals;

(E) presenting and discussing the youth's progress with the youth's treatment team;

(F) completing case plan objectives; and

(G) participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(3) Stage 3--this stage focuses on taking responsibility and making prosocial decisions. Youth on this stage are preparing to move into the action stage of change through continued acknowledgment of the need to change and planning for their future. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) demonstrating a reduction in risk factors and an increase in protective factors;

(B) taking responsibility for behaviors leading to commitment;

(C) completing case plan objectives; and

(D) participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(4) Stage 4--this stage focuses on demonstrating and practicing learned skills for youth. The purpose of this stage is demonstrating independence through application of treatment concepts and skills learned in earlier stages. This stage is considered the second-highest stage for purposes of eligibility for transition under §380.8545 of this chapter. To determine whether youth have completed this stage, youth are assessed on factors including:

(A) demonstrating continued reduction in risk factors and increase in protective factors;

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

(C) completing case plan objectives; and

(D) participating in other areas of programming as described in paragraph (1)(D) of this subsection.

(5) Rehabilitative stages completion status--this designation indicates that a youth has completed stage 4 and is considered the highest stage for purposes of program completion under §380.8555 and §380.8559 of this chapter. Youth are in the maintenance stage of change and will be given the opportunity to demonstrate and apply learned skills. Youth are expected to participate in other areas of programming as described in paragraph (1)(D) of this subsection.

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

(1) returned to a high-restriction facility for disciplinary reasons through a Level II due process hearing;

(2) returned to a high- or medium-restriction facility for disciplinary reasons through a Level I due process hearing; or

(3) recommitted to TJJD for a new offense.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8751

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8751. Specialized Treatment.

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

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

(1) Intensive Treatment Program--a high-intensity treatment program designed to address youth with a high need for specialized treatment. Treatment is generally delivered in specialized groups by licensed or appropriately trained staff.

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

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

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

(5) Moderate-Intensity Treatment Program--a program designed to address youth with a moderate need for specialized treatment. Treatment is generally delivered in specialized groups by licensed or appropriately trained staff.

(c) General Provisions.

(1) Youth with one or more specialized needs will have these needs addressed while under TJJD jurisdiction. Youth may have specialized needs addressed while in a high- or medium-restriction facility or on parole status.

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

(d) Treatment Planning.

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

(2) In addition to the initial plan, a comprehensive plan is developed for each youth with specialized treatment needs. The comprehensive plan must:

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

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

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

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

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

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

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

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

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

(A) High Need--includes youth who require medical, surgical, or dental services of an intense/acute nature. The youth has a serious acute condition, experiences an exacerbation of a chronic medical or dental condition, sustains a serious injury, and/or may require hospitalization. The youth's condition is unstable or unpredictable, and recovery requires 24-hour nursing care or supervision beyond the scope of normal infirmary services. The youth's medical needs, until resolved, take precedence over other therapeutic interventions and temporarily prevent active participation in programming.

(B) Moderate Need--includes youth who are diagnosed with a medical or dental condition that is moderate to serious in severity

and that may require frequent access to clinical and/or hospital services for symptom exacerbation.

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

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

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

(A) High Need - Level 1.

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

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

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

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

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

(ii) This level of impairment is not the result of a conduct disorder, oppositional defiant disorder, or similar impulse control/behavioral disorders and is not the result of intoxication or withdrawal from drugs.

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

(B) High Need - Level 2.

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

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

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

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

(ii) This level of impairment is not the result of a conduct disorder, oppositional defiant disorder, or similar impulse control/behavioral disorders and is not the result of intoxication or withdrawal from drugs.

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

(C) Moderate Need.

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

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

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

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

(ii) This level of treatment need is not the result of a conduct disorder, oppositional defiant disorder, or similar impulse control/behavioral disorders and is not the result of intoxication or withdrawal from drugs.

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

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

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

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

(A) High Need--includes youth diagnosed with moderate or severe intellectual disability who have corresponding deficits in intellectual and adaptive functioning.

(B) Moderate--includes youth diagnosed with mild intellectual disability who have a co-occurring mental health treatment need of moderate or low.

(C) Low Need--includes youth diagnosed with mild intellectual disability who have no co-occurring mental health treatment needs.

(D) None--includes youth who have no diagnosis of intellectual disability.

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

propriate behavior. Based on this assessment, each youth is assigned a need level for sexual behavior treatment services.

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

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

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

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

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

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

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

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

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

(6) Substance Use Services. All youth are screened to determine if they should be assessed for a need for substance use services. Those who need further assessment are assessed and diagnosed by mental health staff or a chemical dependency counselor using the latest edition of the DSM. Based on a clinical interview and the results of an agency-approved, comprehensive assessment instrument, each youth is assigned a need level for substance use services.

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

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

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

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

(f) Requirement to Complete Specialized Treatment.

(1) This subsection applies only to youth who are assessed as having a high or moderate treatment need in the following treatment areas: sexual behavior, capital and serious violent offender, or substance use services. This subsection does not apply to youth assigned to complete psycho-educational supplemental curricula in these treatment areas.

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

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

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

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

(g) Individual Exceptions.

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

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

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

(4) The justification for any individual exceptions granted under this subsection must be documented.

(h) Specialized Aftercare. Youth will be provided specialized aftercare as needed and as available.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503, 380.9510, 380.9520

STATUTORY AUTHORITY

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

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

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this title.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this title;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this title.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this title.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this title.

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this title.

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(13) Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(14) Participating in a Major Disruption of Facility Operations--intentionally participating with two or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(15) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(16) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(18) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(20) Refusing a Search--refusing to submit to an authorized search of person or area.

(21) Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth

to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(22) Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(23) Stealing--intentionally taking property with an estimated value of $100 or more from another without permission.

(24) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(25) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(26) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(27) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(28) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(29) Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(30) Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under $100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than $100 in damage to state or personal property.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
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Proposal publication date: July 29, 2022
For further information, please call: (512) 490-7278

DIVISION 2. DUE PROCESS HEARINGS

37 TAC §§380.9551, 380.9555, 380.9557

STATUTORY AUTHORITY

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9729

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

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CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9517, §380.9535

The Texas Juvenile Justice Department (TJJD) adopts the repeals of §380.9517 and §380.9535 as proposed in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4431). The repeals will not be republished.

SUMMARY OF CHANGES

The repeals of §380.9517, concerning Redirect Program, and §380.9535, concerning Phoenix Program, allow for these levels of intervention to be addressed as part of new §380.9510.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The repeals are adopted under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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