

PROPOSED RULES

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

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

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

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

7 TAC §3.36

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.36, concerning annual assessments and specialty examination fees. The amended rule is proposed to mitigate the assessment effects of participating in the Paycheck Protection Program (PPP) by decreasing a state bank's assessment base by the amount attributable to PPP loans reflected in the bank's financial statements.

Recent events have significantly and adversely impacted the global economy and financial markets. The spread of the Coronavirus Disease (COVID-19) has slowed economic activity in many countries, including the United States. Small businesses have experienced liquidity difficulties and a collapse in revenue streams as millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce. Many small businesses have been forced to close temporarily or furlough employees. Continued access to financing is crucial for small businesses to weather economic disruptions caused by COVID-19 and, ultimately, to help restore economic activity.

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 (Mar. 27, 2020), and in recognition of the exigent circumstances faced by small businesses, the United States Congress created the PPP. PPP loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA), the amount of each being determined at the time the guarantee is exercised. As a general matter, SBA guarantees are backed by the full faith and credit of the U.S. Government. PPP loans also afford borrowers forgiveness up to the principal amount of the PPP loan if the proceeds of the PPP loan are used for certain expenses. The SBA reimburses PPP lenders for any amount of a PPP loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP loan forgiveness. The program has since been renewed and extended several times and, unless further extended, new applications will not be accepted after May 31, 2021.

The annual assessment chargeable to a state bank for the 12-month period beginning each September 1 is calculated based in part on the institution's total assets as reported in its

most recent March 31st call report. An institution that assists economic stability and recovery during the COVID-19 crisis by making PPP loans to customers will increase its total loan portfolio, all else being equal, which will increase the total assets on its balance sheet by an amount equal to the outstanding balance of PPP loans. Absent a change to the assessment rule, this increase in total assets will result in an increase to the institution's annual assessment.

In recognition of the important role Texas state banks have played in providing liquidity to small businesses and helping to stabilize the broader economy in the midst of the economic disruption caused by COVID-19, the agency proposes to mitigate the increased assessment by excluding the quarter-end outstanding balance of all PPP loans from the institution's total assets for purposes of calculating the institution's assessment.

Specifically, the definition of "on-book assets" in §3.36(b)(6) is proposed to be amended to subtract the outstanding balance of PPP loans included on "Schedule RC-M - Memoranda" in the institution's March 31st call report from total assets. In a conforming change, a definition for "PPP" is proposed to be added as new §3.36(b)(7).

Kurt M. Purdom, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be de minimis fiscal implications for state government and no fiscal implications for local government as a result of enforcing or administering the rule.

Mr. Purdom also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is the mitigation of the assessment effects of state bank participation in the PPP.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will limit the effect of the existing rule by decreasing the amount of assessment fees paid to the agency that might otherwise be payable under the unamended rule, but will not, within the meaning and intent of Government Code, §2001.0221:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase in fees paid to the agency;
- create a new regulation;
- expand or repeal an existing regulation;

-- increase or decrease the number of individuals subject to the rule's applicability; or

-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on May 31, 2021. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §31.106, is affected by the proposed amendment.

§3.36. *Annual Assessments and Specialty Examination Fees.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, §3.37 of this title (relating to Calculation of Annual Assessment for Banks), or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies), shall have the following meanings, unless the context clearly indicates otherwise.

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

(6) On-book assets--The total assets reported by a bank, foreign bank branch, or foreign bank agency on the balance sheet contained in its most recent March 31st call report, minus the outstanding balance of PPP loans included on "Schedule RC-M - Memoranda."[⁻]

(7) PPP--The Paycheck Protection Program administered by the Small Business Administration.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on April 16, 2021.

TRD-202101560

Catherine Reyer

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 475-1301



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS SUBCHAPTER C. STANDARDS AND PROCEDURES FOR MANAGEMENT OF ELECTRONIC RECORDS

13 TAC §§7.71 - 7.78

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §7.71, Definitions; §7.72, General; §7.75, Security of Electronic Records; §7.76, Maintenance of Electronic Records Storage Media; and §7.78, Destruction of Electronic Records; and new 13 TAC §7.73, Policies and Procedures; §7.74, Minimum Requirements for all Electronic Local Government Records; and §7.77, Minimum Requirements for all Electronic Records Systems.

Local Government Code, §205.003 requires the Commission to adopt rules establishing standards and procedures for the electronic storage of any local government record data of permanent value. The statute also authorizes the Commission to adopt rules establishing standards and procedures for the electronic storage of any local government record data whose retention period is at least 10 years on a records retention schedule issued by the commission. The rules may require or prescribe the following:

1. Standards and procedures for the generation of backup or preservation copies of the local government record data on paper, microfilm, electronic, or other approved media;
2. Standards and procedures for the recopying or duplication of the magnetic tape, optical disk, or similar machine-readable medium on which the local government record data are stored;
3. Standards and procedures for the physical storage and maintenance of magnetic tapes, optical disks, or similar machine-readable media;
4. Standards and procedures for providing access by members of the public to electronically stored local government record data to which they are entitled under law; and
5. Other standards and procedures that the commission considers necessary to ensure the availability, readability, or integrity of the local government record data.

The proposed amendments and new rules are necessary to implement Local Government Code, §205.003 and update the Commission's existing rules previously adopted under this statutory authority.

The proposed amendments and new rules include changes to update the requirements to reflect best practices and standards of records management. Amendments are also necessary to improve readability and clarity of the rules. Other amendments include removing specific standards and requirements when those specific standards or requirements are unnecessary, combining sections with related goals and requirements, and updating and standardizing language and terms throughout the rules.

Simultaneous with this proposal, the Commission is also proposing the repeals of §7.73, Creation and Use of Data Files; §7.74, Creation and Use of Text Documents; §7.77, Retention of Electronic Records; and §7.79, Public Access to Electronic Records. Some of the repealed rule language is unnecessary, as certain

specific requirements impose expectations that are stricter than necessary to fulfill minimum requirements. Other repealed rule language has been updated and moved into these proposed new rules and amendments.

SUMMARY. The proposed amendments to §7.71 delete the definitions for the Association for Information and Image Management (AIIM), American National Standards Institute (ANSI), and Records Custodian, as those terms are no longer used within the chapter. Other amendments add definitions for authenticity, disposition, essential record, integrity, metadata, migration, reliability, third party custodian, and usability as those terms are used in the chapter. Amendments to existing definitions refine existing language for clarity and brevity. The amendments and new definitions will improve Local Governments' ability to comply with the rules within this chapter and aid in the maintenance, retention, and preservation of records. Lastly, amendments delete an unnecessary statutory citation and renumber the definitions accordingly.

The proposed amendments to §7.72 update the language to improve clarity and readability. Added language clarifies that the requirements are recommended as best practices for electronic records with retention periods of less than ten years.

Proposed new §7.73 would require local governments to approve and institute written policies and procedures that communicate an enterprise-wide approach for electronic records management practices and establishes required minimum components of these policies and procedures. These policies and procedures will ensure the availability, readability, usability, and integrity of local government electronic records and local government electronic records systems. The creation and development of policies and procedures is already a requirement for establishing a records management program under Local Government Code, §203.023. The policy and procedure requirements in the proposed new section are broad requirements that allow local governments the latitude to maintain local government data and systems to their discretion.

Proposed new §7.74 would establish the minimum requirements for the maintenance and storage of electronic records.

The proposed amendments to §7.75 amend rule language for clarity and delete the requirement that local governments must implement and maintain an electronic records security program for office and storage areas that documents that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

The proposed amendments to §7.76 update and simplify rule language for clarity and understandability and remove many requirements specific only to certain specialized types of media. New rule language ensures the requirements are applicable to electronic records regardless of the type of media in which the record exists.

Proposed new §7.77 would establish the minimum requirements for all electronic records systems, to ensure a continuing ability of local governments to access, use, preserve, and dispose of the records contained within those systems, among other requirements.

The proposed amendments to §7.78 would update and simplify rule language regarding court-ordered expungement of information recorded on Write Once Read Many (WORM) electronic storage media by removing specific mention of WORM systems

and disks and broadening the applicability to all types of WORM electronic storage media.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments and new rules, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended and new rules are in effect, the public benefit will be consistency and clarity in the management of electronic records, which will help to provide better management of records across the state. Better management of electronic records will improve retention of public records and increase access to those records by the public.

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

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments and new rules are not major environmental rules under the Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed amendments and new sections do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045. Local governments are required to manage electronic records under the Local Government Code and existing Commission rules adopted under this authority.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and new rules and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2006.0221. During the first five years that the amendments and new rules would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will create new regulations as specifically authorized under Local Government Code, §205.003; will repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments and new rules would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be directed to Megan Carey, Manager, Records Management Assistance, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new rules are proposed under Local Government Code, §205.003, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the electronic storage of permanent records and permits the adoption of rules establishing standards and procedures for the electronic storage of any electronic record with a retention of 10 years or more on a records retention schedule issued by the commission.

CROSS REFERENCE TO STATUTE. Local Government Code, Chapter 205; Government Code, Chapter 441.

§7.71. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in the Local Government Code, Title 6, Subtitle C, Chapter 201.

(1) Authenticity--The quality of a record as being what it purports to be by establishing the origin, reliability, trustworthiness, and correctness of its content. [~~AIIIM--The Association for Information and Image Management.~~]

(2) [~~ANSI--The American National Standards Institute.~~]

~~[(3)] Database~~--An organized collection of structured information or data which makes up records within files that have relationships with other records within other files.

~~[(A) collection of digitally stored data records;]~~

~~[(B) collection of data elements within records within files that have relationships with other records within other files.]~~

(3) ~~[(4)] Database management system (DBMS)~~--Software [~~Set of~~] programs designed to organize, store, and retrieve machine-readable information from within databases [~~a computer-maintained database or data bank~~].

(4) ~~[(5)] Data file~~--Related numeric, textual, sound, or graphic information that is organized in a strictly prescribed form and format.

(5) Disposition--Final processing of local government records by archival transfer under Local Government Code, §203.049 or destruction under Local Government Code, §202.001 or Government Code, §441.0945.

~~[(6) Electronic media~~--All media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media. }

(6) ~~[(7)] Electronic record~~--Any information that is recorded in a form for computer processing and that satisfies the definition of local government record data in the Local Government Code, §201.003(8) [~~§205.001~~].

(7) ~~[(8)] Electronic records system~~--Any information system that produces, manipulates, and stores local government records by using a computer.

(8) Electronic storage media--All physical media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media.

(9) Essential record--A record as defined in Local Government Code, §201.003(5). [~~Records custodian--The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.~~]

(10) Integrity--The quality of a record as complete and free from unauthorized alteration.

(11) Metadata--Data that summarizes basic information about a record, and which can facilitate tracking, locating, verifying authenticity, or working with specific records or data. Examples include, but are not limited to, author, date created, date modified, file extension, and file size.

(12) Migration--The act of moving data or records from one hardware or software system or configuration to another so that records may continue to be understandable and usable for as long as they are needed.

(13) ~~[(10)] Records Management Officer~~--Each elected county officer or the person designated by the governing body of each local government pursuant to the Local Government Code, §203.025.

(14) Reliability--The quality of a record as a full and accurate representation of the activity or transaction it captures.

(15) ~~[(11)] Text documents~~--Narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

(16) Third Party Custodians--Parties with which a local government entity may contract for services who are temporarily responsible for the maintenance of local government records.

(17) Usability--The quality of a record as related to the producing activity or that can be accessed, identified, and readily retrieved, and interpreted or read within the broader context.

§7.72. General.

(a) This subchapter establishes [~~These sections establish~~] the minimum requirements for the maintenance, use, retention, and storage of any electronic record of a local government whose retention period is ten years or more on a records retention schedule adopted under §7.125 of this title (relating to Records Retention Schedules). These requirements are recommended as best practices for [~~These sections do not apply to~~] electronic records with retention periods of less than ten years. All electronic records [~~but they~~] are subject to the applicable provisions of the Local Government Code, Chapter 205.

(b) Unless otherwise noted, these requirements apply to all electronic records systems and electronic storage media [~~storage systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media~~].

(c) [~~An electronic storage authorization request certifying that the requirements of these sections will be followed must be submitted to and approved by the director and librarian for all existing electronic storage, and before any new electronic storage, of records subject to this section. The authorization request must be submitted in a form and manner to be determined by the director and librarian and must be signed by the records management officer.~~]

[(d)] The governing body of a local government and its records management officer, in cooperation with other employees of the local government, [records eustodians] must:

(1) administer a program for the management of records created, received, maintained, used, or stored on electronic media;

(2) integrate the management of electronic records with other records and information resources management programs;

(3) incorporate electronic records management objectives, responsibilities, and authorities in pertinent directives;

(4) establish procedures for addressing records management requirements, including recordkeeping requirements and disposition;

(5) make training available [ensure that training is provided] for users of electronic records systems that addresses: [in]

(A) the operation, care, and handling of the equipment, software, [and] media, and information contained [used] in the system; and

(B) records management concepts and applicable requirements, including any records management issues as they relate to subparagraph (A) of this paragraph;

(6) develop and maintain [ensure the development and maintenance of] up-to-date documentation about all electronic records systems that is adequate to specify all technical characteristics necessary for reading or processing the records and the timely, authorized disposition of records; and

(7) specify the location and media on which electronic records are maintained to meet retention requirements and maintain inventories of electronic records systems to facilitate disposition.

(d) [(e)] An [Any] electronic records [recordkeeping] system not meeting the provisions of this subchapter [these sections] may be utilized for records subject to this section provided the source document, if any, or a paper copy of the record is maintained, or the record is microfilmed in accordance with the provisions of Local Government Code, Chapter 204, and the rules adopted under it.

§7.73. Policies and Procedures.

(a) Local government records management officers, in conjunction with the governing body, shall approve and institute written policies and procedures that communicate an enterprise-wide approach for electronic records management practices, and ensure electronic records maintain and retain reliability, usability, integrity, and authenticity.

(b) A local government's policies and procedures must:

(1) establish a component of the local government's active and continuing records management program to address the management of electronic records created, received, retained, used, transmitted, or disposed of electronically, including electronic records maintained or managed by third-party custodians or other external entities;

(2) integrate the management of electronic records into existing records and information resources management programs;

(3) incorporate electronic records management objectives, responsibilities, and authorities;

(4) address electronic records management requirements, including retention requirements and final disposition;

(5) address the use of new technologies through regular media and format conversion, recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic

records until the expiration of their retention periods and final disposition; and

(6) ensure transparency by documenting, in an open and verifiable manner, the processes and activities carried out in the management of electronic records.

(c) A local government's policies and procedures must ensure information that must be protected from unauthorized use or disclosure is appropriately protected as required by applicable law, regulation, or other applicable requirement.

§7.74. Minimum Requirements for all Electronic Records.

(a) Each local government must:

(1) manage electronic records according to the local government's records management program and records retention schedule regardless of format, system, or storage location;

(2) maintain ownership and responsibility for electronic records regardless of where the record originates or resides, including, but not limited to, external electronic records systems, third-party custodians, and social media platforms;

(3) develop and maintain up-to-date documentation about electronic records systems and storage media adequate to identify, retain, read, process, or migrate electronic records and ensure the timely, authorized final disposition of electronic records;

(4) ensure that electronic records remain readily retrievable and readable for as long as they are maintained by the local government through migration or by maintaining any software, hardware, and documentation required to retrieve and read the electronic records;

(5) maintain descriptive and technical metadata required for electronic records to maintain and retain reliability, including metadata necessary to adequately support the usability, authenticity, or integrity as well as the preservation of a record;

(6) preserve the authenticity, integrity, reliability, and usability of the records;

(7) ensure that electronic records are readily retrievable and readable independently of other records in the electronic records system or storage media;

(8) ensure that system backups that are required for disaster recovery are not used to satisfy records retention requirements unless indexed to ensure usability and are tested on a regular basis; and

(9) require all third-party custodians of records to provide the local government with descriptions of their business continuity and/or disaster recovery plans pertaining to the protection of the local government's essential records.

(b) Any technology for electronic records developed, used, or acquired by a local government must support the local government's ability to meet the minimum requirements in subsection (a) of this section to preserve and make readily retrievable and readable any electronic record or to extract or migrate the record in as complete a form as possible for its full retention period.

§7.75. Security of Electronic Records.

(a) Local governments must implement and maintain an electronic records security program for office and storage areas that:

(1) ensures that only authorized local government employees [personnel] have access to electronic records;

(2) provides for backup and recovery of records to protect against information loss;

(3) ensures that authorized local government employees [personnel] are trained to safeguard confidential electronic records; and

(4) minimizes the risk of unauthorized alteration or erasure of electronic records. [; and]

[(5) documents that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.]

(b) A duplicate copy of essential records and any software or documentation required to retrieve and read the records must be maintained in a separate storage area [located in a separate building from the building where the records that have been copied are maintained].

(c) For records stored on rewritable electronic storage media, local governments [the system] must ensure that read/write privileges are controlled and that an audit trail of rewrites is maintained.

§7.76. *Maintenance of Electronic [Records] Storage Media.*

(a) Local governments must ensure that the reliability, integrity, and usability [accuracy, completeness, and accessibility] of information is [are] not lost prior to its authorized destruction date because of changing technology or media deterioration through periodic checking and maintaining the state of electronic storage media, [by] converting electronic storage media or file format, and taking other action as required to provide compatibility with current hardware and software. The migration strategy for upgrading equipment as technology evolves must be documented and include:

(1) periodically recopying to the same electronic media as required, and/or transferring of data from an obsolete technology to a supportable technology; and

(2) providing backward [system] compatibility to the data in [the] old systems [system], and/or converting data to media that the system upgrade and/or replacement can support.

(b) The storage areas for electronic storage media must be maintained in environments without high levels of airborne particulates and within the following temperatures and relative humidities: [Paragraphs (1)-(3) of this section outline the maintenance of backup electronic media stored offsite.]

(1) For magnetic media--65 degrees Fahrenheit to 75 degrees Fahrenheit, and 30% to 50% relative humidity; [Magnetic computer tapes must be tested and verified no more than six months prior to using them to store electronic records. Pretesting of tapes is not required if an automated system is used that monitors read/write errors and there is a procedure in place for correcting errors.]

(2) For optical disks--14 degrees Fahrenheit to 74 degrees Fahrenheit, and 20% to 50% relative humidity. [The storage areas for electronic media must be maintained within the following temperatures and relative humidities:]

[(A) for magnetic media--65 degrees Fahrenheit to 75 degrees Fahrenheit, and 30% to 50% relative humidity;]

[(B) for optical disks--14 degrees Fahrenheit to 122 degrees Fahrenheit, and 10% to 90% relative humidity.]

[(3) A random sample of all magnetic computer tapes must be read annually to identify any loss of data and to discover and correct the causes of data loss. At least a 10% sample or a sample size of 50 magnetic tapes, whichever is less, must be read. Tapes with unrecoverable errors must be replaced and, when possible, lost data must be restored. All other tapes which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) must be read and corrected.]

(c) Electronic storage media that cannot meet the requirements of subsection (a) of this section may not be used for the exclusive storage of electronic records subject to this subchapter. [Local governments must recopy data maintained on electronic media according to the following schedule.]

[(1) Data maintained on magnetic tape must be recopied onto new or used tape a minimum of once every three years.]

[(2) An alternative option for recopying magnetic tape is for the data to be recopied onto new tape a minimum of once every 10 years, provided the tape is rewound under controlled tension every 3 1/2 years. The requirement for rewinding does not apply to 3480-type tape cartridges.]

[(3) Data maintained on optical disks must be recopied a minimum of once every 10 years.]

[(d) Floppy disks (diskettes) or any type of flexible disk system may not be used for the exclusive storage of records subject to these sections.]

[(e) External labels, or an eye-readable index relating to unique identifiers, for electronic media used to process or store electronic records must include the following information]

[(1) name or other identifier of the organizational unit responsible for the records;]

[(2) descriptive title of the contents;]

[(3) dates of creation and authorized disposition date;]

[(4) security classification;]

[(5) identification of the software (to include specific application if appropriate) and hardware used; and]

[(6) system title, including the version number of the application.]

(d) [(f)] Additionally, if [the following information must be maintained for] electronic storage media is used to store permanent electronic records, local governments must maintain any metadata and media-specific information necessary to access the records. [;]

[(1) file title(s);]

[(2) dates of coverage;]

[(3) the recording density;]

[(4) type of internal labels;]

[(5) volume serial number, if applicable;]

[(6) the number of tracks;]

[(7) character code/software dependency;]

[(8) information about block size;]

[(9) sequence number, if the file is part of a multi-media set; and]

[(10) relative starting position of data, if applicable.]

(e) [(g)] The following standards must be met for electronic records stored as digital images on electronic storage [optical] media: [;]

(1) A visual quality control evaluation must be performed on a representative sample of scanned images and related index data. A representative sample must be at least 10% of the total scanned images. [A non-proprietary image file header label must be used, or the system developer must provide a bridge to a non-proprietary image file

header label, or the system developer must supply a detailed definition of image file header label structure.]

{(2) The system hardware and/or software must provide a quality assurance capability that verifies information that is written to the optical media.}

{(3) Periodic maintenance of optical data storage systems is required, including an annual recalibration of the optical drives.}

{(4) Scanner quality must be evaluated based on the standard procedures in American National Standard for Information and Image Management—Recommended Practice for Quality Control of Image Scanners (ANSI/AIIM MS44-1988) and American National Standard for Information and Image Management—Recommended Practice for Monitoring Image Quality of Roll Microfilm and Microfiche Scanners (ANSI/AIIM MS49-1993).}

{(5) A visual quality control evaluation must be performed for each scanned image and related index data.}

(2) [(6)] A scanning density with a minimum of 200 dots per inch is required for recording text documents that contain no type font smaller than six point.

(3) [(7)] A scanning density with a minimum of 300 dots per inch is required for engineering drawings, maps, and other text documents with background detail.

(4) [(8)] The selected scanning density must be validated with tests on actual text documents.

{(9) The use of the Consultative Committee on International Telegraphy and Telephony (CCITT) Group 3 or Group 4 compression techniques is required for document images without continuous tonal qualities. If use of a proprietary compression technique is unavoidable, the vendor must provide a gateway to either Group 3 or Group 4 compression techniques.}

{(10) Optical drive systems must not be operated in environments with high levels of airborne particulates.}

{(11) All aspects of the design and use of the imaging system must be documented, including administrative procedures for digital imaging, retrieval, and storage; technical system specifications; problems encountered; and measures taken to address them, including hardware and software modifications.}

(f) [(h)] A local government must prohibit smoking [Smoking], drinking, and eating [must be prohibited] in areas containing electronic [media] storage media [areas].

§7.77. Minimum Requirements for all Electronic Records Systems.

(a) Local governments must maintain up-to-date technical documentation for each electronic records system that produces, uses, and stores data files. Documentation must:

(1) include a narrative description of the system;

(2) describe the physical and technical characteristics of the records, including, but not limited to, each field associated with a record; its name, size, starting or relative position; and the form of the data;

(3) outline steps to ensure the electronic records system remains usable for as long as the system is maintained by the local government, including maintaining any software, hardware, and documentation required to retrieve and read the electronic records;

(4) describe the required descriptive and technical metadata the electronic records system must maintain for electronic records

to have reliability, including metadata necessary to adequately support the usability, authenticity, integrity, and preservation of a record; and

(5) incorporate instructions for carrying out disposition of records into electronic records systems.

(b) Local governments must ensure electronic records systems using electronic storage media to maintain the record copy, or data used to generate the record copy, allow for:

(1) all authorized users of the system to retrieve desired records, such as an indexing or text search system;

(2) security to ensure integrity of the records;

(3) exchanging records using an established standard format amongst the departments of the local government using different software/operating systems; and

(4) disposition of the records.

(c) An electronic records system must not create an impediment to access to public records.

(d) Local governments must ensure that records created or maintained in electronic records systems can be:

(1) identified sufficiently to enable authorized personnel to retrieve, protect, and carry out disposition of the records in the system; and

(2) associated with related records in other formats.

(e) A local government must prohibit smoking, drinking, and eating in areas containing electronic records systems that maintain the record copy.

§7.78. Destruction of Electronic Records.

(a) Electronic records may be destroyed only in accordance with the Local Government Code, §202.001.

(b) Each local government must ensure that:

(1) electronic records eligible [scheduled] for destruction are disposed of in a manner that ensures protection of any confidential information; and

(2) electronic [magnetic] storage media [previously] used for electronic records containing confidential information is [are] not reused if the previously recorded information can be compromised in any way through [by] reuse [in any way].

(c) For [The following requirements must be met for] the court-ordered expungement of information recorded on [an optical] Write-Once-Read-Many (WORM) electronic storage media, all copies of the information must be destroyed wherever it exists, including any record, index, or reference to the expunged information on other electronic storage media. Methods for expunging information from WORM electronic storage media include: [system.]

{(1) Two methods are allowed for expunging information from a WORM disk:}

(1) [(A)] overwriting the information [may be overwritten] to obliterate the original data [image], leaving no evidence of the original information; or

(2) [(B)] rewriting all of the indices, pages, or documents [on a disk], other than the expunged information, onto new electronic storage media and physically destroying the old electronic storage media [document(s), must be rewritten to a new disk and the old disk must be physically destroyed].

[(2) In cases where a complete page or record is expunged, all reference to the page or record must be removed from the index. If the index has been copied, the index must be recopied after the reference to the page or record has been removed.]

[(3) Copies of the original WORM disk and copies of the information removed by expungement must be destroyed or changed to reflect the court order. All copies of the record, index, or reference to the original unrevised information on WORM disk copies or copies in any other media must be destroyed.]

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

Filed with the Office of the Secretary of State on April 15, 2021.

TRD-202101556

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 463-5591



13 TAC §§7.73, 7.74, 7.77, 7.79

The Texas State Library and Archives Commission (Commission) proposes the repeal of existing rules at 13 TAC §7.73, Creation and Use of Data Files; §7.74, Creation and Use of Text Documents; §7.77, Retention of Electronic Records; and §7.79, Public Access to Electronic Records.

The proposed repeals are necessary because some of the repealed rule language is unnecessary, as certain specific requirements impose expectations that are stricter than necessary to fulfill minimum requirements. Other repealed rule language has been updated and moved into proposed new rules and amendments. The proposed repeals coincide with proposed amendments and new rules to 13 TAC Chapter 7, Subchapter C also published in this edition of the *Texas Register*.

FISCAL NOTE. Craig Kelso, Director, State and Local Records Management Division, has determined that for each of the first five years the proposed repeals are in effect, there will not be a fiscal impact on state, or local government as a result of enforcing or administering these repeals, as proposed. There will not be any effect on small businesses, microbusinesses or rural communities.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the repeals are in effect, the public benefit will be consistency and clarity in the management of electronic records, which will help to provide better management of records across the state. Better management of electronic records will improve retention of public records and increase access to those records by the public.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeals. During the first five years that the proposed repeals would be in effect, the proposed repeals: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will

repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeals will be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeals may be submitted to Megan Carey, Manager, Records Management Assistance, State and Local Records Management Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The repeals are proposed under Local Government Code, §205.003, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the electronic storage of permanent records and permits the adoption of rules establishing standards and procedures for the electronic storage of any electronic record with a retention of 10 years or more on a records retention schedule issued by the commission.

CROSS REFERENCE TO STATUTE. Local Government Code, Chapter 205; Government Code, Chapter 441.

§7.73. *Creation and Use of Data Files.*

§7.74. *Creation and Use of Text Documents.*

§7.77. *Retention of Electronic Records.*

§7.79. *Public Access to Electronic Records.*

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

Filed with the Office of the Secretary of State on April 15, 2021.

TRD-202101557

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 463-5591



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.2, concerning dental licensure by examination. The proposed amendment reflects the North East Regional Board of Dental Examiners (NERB) name change to The Commission on Dental Competency Assessments (CDCA), and the effective date of the name change.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by examination who is a graduate of an accredited school must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(3) Has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board.

(b) In addition to the general qualifications for licensure contained in §101.1 of this chapter, an applicant for licensure by examination who is a graduate of a non-accredited school must present proof that the applicant:

(1) Has graduated from a dental school that is not CODA-accredited;

(2) Has successfully completed training in an American Dental Association-approved specialty in a CODA-accredited education program that consists of at least two years of training as specified by the Council on Dental Education;

(3) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations; and

(4) Has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the Board.

(c) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) The Commission on Dental Competency Assessments [~~Northeast Regional Board~~], January 9, 2015 [~~January 1, 2005~~];

(D) Southern Regional Testing Agency, January 1, 2005; and

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

(d) Remediation.

(1) If an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete 80 hours of clinical remediation through a CODA-accredited dental school before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more general dentistry clinical examination attempts, the applicant must complete one of the following before approval will be issued to take another clinical examination:

(A) the repetition of the final year of a graduate dental program from a CODA-accredited dental school; or

(B) a clinical remediation course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours.

(3) All programs of clinical remediation require prior approval by the Board. Applicants will be responsible for locating, identifying and obtaining approval from the Board prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board approves a remediation program for the applicant.

(e) An applicant who takes an examination after January 1, 2019, must also successfully complete the periodontics and prosthodontics sections of an exam approved under subsection (c)(1) of this section.

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

Filed with the Office of the Secretary of State on April 15, 2021.

TRD-202101553

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 305-8910



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.2, concerning dental hygiene licensure by examination. The proposed amendment reflects the North East Regional Board of Dental Examiners (NERB) is now The Commission on Dental Competency Assessments (CDCA), and the effective date of the name change.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and

(8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.2. Licensure by Examination.

(a) (No change.)

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) The Commission on Dental Competency Assessments, January 9, 2015 [~~Northeast Regional Board, January 1, 2005~~];

(D) Southern Regional Testing Agency, January 1, 2005; and

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

(c) (No change.)

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

Filed with the Office of the Secretary of State on April 15, 2021.

TRD-202101554

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 305-8910



TITLE 26. HEALTH AND HUMAN SERVICES PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER F. BACKGROUND CHECKS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§745.601, 745.607, 745.609, and 745.669, in Texas Administrative Code (TAC), Title 26, Part 1, Chapter 745, concerning Licensing.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement a portion of the federal Child Care Development Block Grant (CCDBG) Act of 2014, as it applies to 26 TAC Chapter 745, Licensing. The CCDBG Act of 2014 is codified in 42 United States Code 9858 et seq., and requirements related to the Act are codified in federal rules located in 45 Code of Federal Regulations Part 98. These federal statutes and rules contain requirements related to the Child Care and Development Fund, which is the primary federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. Texas receives this funding through the Texas Workforce Commission. The Child Care Regulation (CCR) department of HHSC is responsible for implementing certain requirements, including those related to background checks.

The CCDBG Act of 2014 requires CCR to conduct a name-based check of the National Sex Offender Registry (NSOR) for any person requiring a fingerprint-based check at a child day care operation covered by the Act. Currently, as part of an overall background check, a Texas Sex Offender Registry search is conducted as part of a name-based Texas criminal history check or a fingerprint-based criminal history check. A sex offender registry check is also conducted in another state or territory if there is reason to believe the subject of the background check is registered as a sex offender outside Texas or has lived outside Texas within the past five years. The NSOR check will add another layer to the overall background check process in an effort to enhance child safety.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.601 (1) adds a definition for the NSOR; (2) renumbers the subsections that follow the added subsection for the NSOR definition; and (3) updates the rule to improve readability and understanding.

The proposed amendment to §745.607 (1) adds the NSOR check to the types of background checks; (2) updates the title number of the figure; and (3) corrects a capitalization error.

The proposed amendment to §745.609 requires the NSOR check for any person who requires a fingerprint-based check at a child day care operation covered by §745.611(a)(1).

The proposed amendment to §745.669 prohibits a person registered as a sex offender with the NSOR from being present at an operation.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any costs on these entities, there will be no fee for the NSOR check, and CCR does not anticipate any actions required of providers that would incur a cost.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be to improve the safety of children in care and compliance with statutory requirements.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on those required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhsc.state.tx.us.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCLrules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R129" in the subject line.

DIVISION 1. DEFINITIONS

26 TAC §745.601

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendment implements Texas Human Resources Code §§42.042 and 42.056, as well as the requirement for NSOR checks in 45 Code of Federal Regulations §98.43(b)(2).

§745.601. *What words must I know to understand this subchapter?*

These words have the following meanings:

(1) **CBCU**--The Centralized Background Check Unit is a subdivision of Licensing that conducts background checks and risk evaluations.

(2) **Central Registry**--A Texas Department of Family and Protective Services (DFPS) [~~DFPS~~] database of persons who have been found by Licensing or an investigations division within DFPS to have abused or neglected a child.

(3) **Client in care**--A child, young adult, or adult in the care of your operation, including foster children or young adults for whom your operation is receiving foster care payments, adults in care through the Health and Human Services System, court-ordered placements, and kinship care. A biological or adopted child is not a client in care.

(4) **Criminal history**--Includes arrests, dispositions, and deferred adjudication community supervision. Criminal history does not include expunged criminal history or non-disclosure history. It does not include juvenile history, although the CBCU may determine that the subject of a background check poses an immediate threat or danger to the health or safety of children based on a juvenile adjudication that the CBCU receives with the subject's criminal history.

(5) **Days**--Calendar days.

(6) **Designated finding**--A finding in the Central Registry against a person (also known as a designated perpetrator) who has not exhausted the person's due process rights, including an administrative review, a due process hearing, and any subsequent rights of appeal. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(7) **DFPS**--Texas Department of Family and Protective Services.

(8) **DPS**--Texas Department of Public Safety.

(9) **Direct access**--Being counted in the **child to caregiver** [~~child/caregiver~~] ratio or having any responsibility that requires contact with children in care.

(10) **FBI**--Federal Bureau of Investigation.

(11) **HHSC**--Texas Health and Human Services Commission.

(12) **Initial background check**--The first background check that your operation submits for a person required to have a background check, as specified in §745.605 of this subchapter (relating to For whom must I submit requests for background checks?).

(13) **Licensing**--The Child Care Regulation department [~~Licensing Department~~] of HHSC.

(14) **National Sex Offender Registry**--A National Crime Information Center file that contains records on persons who are required to register in a jurisdiction's sex offender registry.

(15) [(14)] **Present at an operation**--A person is present at an operation if the person has or may have contact with children in care as follows:

(A) The person is physically present at an operation while any child is in care, unless the person is present for the sole purpose of attending orientation or pre-service training and does not have contact with children in care;

(B) The person has responsibilities that may require the person to be present at an operation while any child is in care;

(C) The person resides at an operation or is present at an operation on a regular or frequent basis; or

(D) The person has direct access to any child in care, including supervised or unsupervised direct access to any child.

(16) [(15)] **Regularly or frequently present at an operation**--The definition means:

(A) A person is regularly or frequently present at an operation if the person:

(i) Is present at an operation on a scheduled basis;

(ii) Visits the operation three or more times in a 30-day period, with each visit being a period of time of less than 24 hours, and with multiple or periodic visits to an operation within the same day counting as one visit;

(iii) Stays or resides at the operation for more than seven consecutive days; or

(iv) Stays or resides at the operation three or more times per year, and the duration of each stay exceeds 48 hours.

(B) For foster homes, the following persons are not considered to be regularly or frequently present at a foster home:

(i) A child unrelated to a foster parent who visits the foster home unless:

(I) The child is responsible for the care of a foster child; or

(II) There is a reason to believe that the child has a criminal history or previously abused or neglected a child; and

(ii) An adult unrelated to a foster parent who visits the foster home unless:

(I) The adult has unsupervised access to children in care; or

(II) There is a reason to believe that the adult has a criminal history or previously abused or neglected a child.

(C) For a child day-care operation, parents are not regularly or frequently present at an operation solely because they are visiting their child, which may include dropping off or picking up their child, eating lunch with their child, visiting or observing their child, or consoling their child. However, a parent may be regularly or frequently present at an operation if he or she volunteers at an operation or is otherwise present at an operation for a reason other than visiting his or her child.

(17) [(16)] Renewal background check--A subsequent background check that your operation submits for a person who has already had an initial background check at your operation as specified in §745.605 of this subchapter.

(18) [(17)] Risk evaluation--A process conducted by the CBCU that is initiated by the subject of a background check with a criminal history or child abuse and neglect history. During this process the CBCU reviews information and determines whether the subject with a criminal conviction or child abuse or neglect finding or the subject who has been arrested or charged with a crime poses a risk to the health or safety of children in a particular operation.

(19) [(18)] Subject or subject of a background check--A person on whom the operation submits a request for a background check.

(20) [(19)] Substitute employee--A person present at an operation usually for the purpose of fulfilling an absent employee or caregiver role.

(21) [(20)] Sustained finding--A finding in the Central Registry against a person who has already been offered due process rights to an administrative review and a due process hearing, and:

(A) The person has waived all of the person's due process rights by not timely requesting an administrative review and a due process hearing or by waiving those rights in writing as specified in §745.8817 of this chapter (relating to Can I waive my right to an administrative review?) and §745.8855 of this chapter (relating to Can I waive my right to a due process hearing?); or

(B) The child abuse or neglect finding was upheld in the due process hearing and any subsequent appeals.

(22) [(21)] Unsupervised access--The person is allowed to be with children without the presence of a caregiver that is counted in the child to caregiver [~~child/caregiver~~] ratio and meets the minimum education requirements, work experience, training qualifications, and background check requirements.

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

Filed with the Office of the Secretary of State on April 14, 2021.

TRD-202101548

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 438-3269



DIVISION 2. REQUESTING BACKGROUND CHECKS

26 TAC §745.607, §745.609

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments implement Texas Human Resources Code §§42.042 and 42.056, as well as the requirement for NSOR checks in 45 Code of Federal Regulations §98.43(b)(2).

§745.607. What are the different types of background checks?

The different [~~There are six~~] types of background checks are described in the following table:

Figure: 26 TAC §745.607

~~[Figure: 40 TAC §745.607]~~

§745.609. What types of background checks are required for persons at my operation?

(a) Except as described in subsection (b) of this section, persons required to have a background check under §745.605 of this division (relating to For whom must I submit requests for background checks?) must have the following types of background checks:

(1) As further described in §745.611 of this division (relating to Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check?), either a:

(A) Fingerprint-based criminal history check; or

(B) Name-based Texas criminal history check;

(2) A Central Registry check; ~~and~~

(3) If your operation is a child day-care operation, a National Sex Offender Registry check for persons who require a fingerprint-based criminal history check under §745.611(a)(1) of this division; and

(4) [(3)] As further described in §745.613 of this division (relating to Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check?), for certain persons, an:

(A) Out-of-state criminal history check;

(B) Out-of-state child abuse and neglect registry check; and

(C) Out-of-state sex offender registry check.

(b) This rule does not apply to listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations. See §745.615 of this division (relating to What types of background checks are required for persons at listed family homes that only provide care to related children, employer-based child care operations, and shelter care operations?).

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

Filed with the Office of the Secretary of State on April 14, 2021.

TRD-202101549

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: May 30, 2021
For further information, please call: (512) 438-3269



DIVISION 4. CRIMINAL HISTORY, SEX OFFENDER REGISTRY, AND CHILD ABUSE OR NEGLECT FINDINGS

26 TAC §745.669

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

The amendments implement Texas Human Resources Code §§42.042 and 42.056, as well as the requirement for NSOR checks in 45 Code of Federal Regulations §98.43(b)(2).

§745.669. Will [a requirement that] a subject who is registered or required to register with the Texas Sex Offender Registry, [or] an out-of-state sex offender registry, or the National Sex Offender Registry be allowed [affect the subject's ability] to be present at an operation?

No [Yes], a subject who is registered or required to register as a sex offender with the Texas Sex Offender Registry, an out-of-state sex offender registry, or the National Sex Offender Registry [in Texas or any other state or territory] may not be present at an operation.

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

Filed with the Office of the Secretary of State on April 14, 2021.

TRD-202101550

Karen Ray
Chief Counsel

Health and Human Services Commission
Earliest possible date of adoption: May 30, 2021
For further information, please call: (512) 438-3269



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 143. EXECUTIVE CLEMENCY

SUBCHAPTER D. REPRIEVE FROM EXECUTION

37 TAC §143.43

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 143, Subchapter D, §143.43, concerning procedure in capital reprieve cases. The amendments proposed

delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez has also determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice and provide clarification for the application process.

Mr. Gutiérrez has also determined that during the first five years the proposed amendments are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; do not create a new regulation; do not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

§143.43. Procedure in Capital Reprieve Cases.

(a) The written application in behalf of an offender seeking a Board recommendation to the Governor or a reprieve from execution must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the twenty-first calendar day before the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day.

(b) All supplemental information, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(c) The application and any [Any] information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, must be provided by the applicant in an amount determined by the Presiding Officer [sufficient to allow review by all members of the Board. An amount sufficient shall mean not less than 12 and not more than 20 copies of the duplicate item].

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

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

Filed with the Office of the Secretary of State on April 16, 2021.

TRD-202101558

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 406-5478



SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §143.57

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 143, Subchapter D, §143.57 concerning commutation of sentence. The amendments proposed delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez has also determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice and provide clarification for the application process.

Mr. Gutiérrez has also determined that during the first five years the proposed amendments are in effect, the amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bet-

tie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

§143.57. *Commutation of Death Sentence to Lesser Penalty.*

(a) The Board will consider recommending to the Governor a commutation of death sentence to a sentence of life imprisonment or the appropriate maximum penalty that can be imposed upon receipt of:

(1) a request from the majority of the trial officials of the court of conviction; or

(2) a written request of the offender or representative setting forth all grounds upon which the application is based, stating the full name of the offender, the county of conviction, the execution date, and contain the information outlined in §143.42(1) - (6) of this chapter (relating to Reprieve Recommended by the Board).

(b) The written application in behalf of an offender seeking a Board recommendation to the Governor of commutation of the death sentence to a lesser penalty shall be addressed to the Texas Board of Pardons and Paroles and must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the twenty-first calendar day before the day the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day.

(c) All supplemental information not filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(d) The application and any [Any] information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, must be provided by the applicant in an amount determined by the Presiding Officer. [sufficient to allow review by all members of the Board. An amount sufficient shall mean not less than 12 and not more than 20 copies of the duplicate item.]

(e) An offender seeking a Board recommendation to the Governor of commutation of the death sentence to a lesser penalty may request an interview with a member of the Board. Such request shall be included in the written application or any supplement filed therewith in accordance with this section.

(f) Upon receipt of a request for an interview, the Presiding Officer (Chair) shall designate at least one member of the Board to conduct the requested interview. Such interview shall occur at the confining unit of TDCJ-CID. Attendance at such interviews shall be limited to the offender, the designated Board Member(s), Board staff, and TDCJ-CID staff. The Board may consider statements made by the offender at such interviews and any other materials the offender delivers

to the Board Member during the interview when considering the offender's application for commutation of the death sentence to a lesser penalty.

(g) The Board shall consider and decide applications for commutation of the death sentence to a lesser penalty. Upon review, a majority of the Board, or a majority thereof, in written and signed form, may:

- (1) recommend to the Governor the commutation of the death sentence to a lesser penalty;
- (2) not recommend commutation of the death sentence to a lesser penalty; or
- (3) set the matter for a hearing pursuant to §143.43 of this chapter (relating to Procedure in Capital Reprieve Cases).

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

Filed with the Office of the Secretary of State on April 16, 2021.

TRD-202101559

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: May 30, 2021

For further information, please call: (512) 406-5478

