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 11. TEXAS OFFICE OF PRODUCE SAFETY

The Texas Department of Agriculture (TDA or the Department) adopts new Title 1, Part 4, Chapter 11, Texas Office of Produce Safety, Subchapter A, General Provisions, §§11.1-11.4, relating to General Provisions; Subchapter B, Coverage and Exemptions, §§11.20-11.23; and Subchapter C, Compliance and Enforcement, §§11.40-11.43. Subchapter A, General Provisions, is adopted with changes to the proposed rule published in the June 14, 2019, issue of the Texas Register (44 TexReg 2905); Subchapters B and C are adopted without changes to the proposal published in the June 14, 2019, issue of the Texas Register (44 TexReg 2905) and will not be republished.

The adopted rules are for TDA's administration of the Food Safety Modernization Act (FSMA), P.L. 111-353, and the rules established by the United States Food and Drug Administration (FDA) to comply with FSMA for produce, titled "Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption," 21 CFR Part 112, commonly referred to as the Produce Safety Rule (Rule).

Through a cooperative agreement with the FDA, the Department is administering the Produce Safety Rule to advance efforts for a nationally integrated food safety system. As part of the cooperative agreement, the Department established the Texas Office of Produce Safety (TOPS) within TDA to administer the Produce Safety Rule.

The rules are adopted to protect Texas consumers and producers by ensuring that food grown, harvested, and packed for human consumption meets the requirements of the Produce Safety Rule. TDA will continue to work in cooperation with local farmers and the fresh fruit and vegetable industries in Texas, by offering outreach programs to educate producers and promote understanding and compliance with the requirements of the Produce Safety Rule throughout the implementation process. Through this collaborative effort, consumers in Texas and nationwide can be assured that Texas produce meets national standards designed to protect individuals and families from foodborne illness.

The Department received 12 comments on the proposal.

Susie Marshall, FSMA Program Manager for the Texas Organic Farmers and Gardeners Association (TOFGA) submitted comments expressing concerns with the effects of the rules on small farmers. TOFGA also submitted numerous questions with their comments which will not be addressed in this adoption document but will be addressed directly with the organization and producers as part of stakeholder outreach. TOFGA's comments will be addressed individually.

(1) "Mandatory registration." TOFGA opposed its perceived "mandatory registration" for farms because they believe it could create confusion and record keeping burdens on their farmers. TDA notes that there is no "mandatory registration" requirement for farms. Any farm seeking a Qualified Exemption or renewal of that exemption is only required to submit an affirmation of that status; documentation is not required to be submitted with that reaffirmation. The Produce Safety Rule provides that farmers are required to maintain records, regardless of whether they are qualified exempt under the Rule.

(2) Right of Entry. TOFGA opposed §11.40(b), stating that Qualified Exempt farms should not be subject to entry for inspections. While the Department appreciates the comment, §11.1(6), relating to definitions, defines inspections to include the review of records, and therefore no amendment to the proposed section will be made.

(3) Penalty Matrix. TOFGA expressed that the "penalties seem excessive." Administrative penalties are a deterrent for violations and help to ensure that Texas producers meet all standards required by the Produce Safety Rule to avoid any foodborne illness outbreaks. No changes will be made to the penalty matrix at this time.

Judith Mcgreary, Executive Director, submitted comments on behalf of the Farm and Ranch Freedom Alliance (FARFA). FARFA's comments are addressed individually.

(1) Registration. FARFA suggested that the rules create a registration requirement. This has been addressed above in response to TOFGA's first comment.

(2) Lack of Legal Authority. FARFA suggests that TDA does not have the authority to require exempt farms to "register" with the Department. The Department is authorized to administer the Produce Safety Rule as part of a cooperative agreement with FDA, and pursuant to §91.009(d) of the Texas Agriculture Code, has authority to adopt rules necessary to administer, implement and enforce the coordination of produce safety.

(3) Documentation Provisions/Burden of Proof. FARFA suggests that renewal of eligibility provisions do not provide detailed information as to what will be required as part of the submission process for renewal of qualified exemption. TDA notes that all forms are not a part of the rulemaking process and those requirements do not need to be included in this proposal. Information regarding renewal is addressed in TOFGA's first comment, above.

(4) Right of Entry. FARFA commented that the right of entry provisions are "ambiguous and overbroad" as they apply to Quali-
fied Exempt farms. TDA has addressed this comment above, in TOFGA comment number two.

(5) Egregious Condition. FARFA states that the definition of "egregious condition" is not provided in federal or state statute or regulation and the Department is relying on a definition prepared by FDA and state departments of agriculture, which "was prepared without public input." The definition developed by FDA is being used as part of the inspection process nationally. FARFA argues that the Department lacks the statutory authority to "create a new standard." TDA appreciates the comment submitted by FARFA. As stated above, per the Texas Agriculture Code, §91.009, TDA has the authority to adopt rules and define program terminology necessary to administer the Rule. In response to FARFA's comment, the Department has changed the §11.1(4) to clarify and narrow the meaning of "egregious condition."

(6) Penalty Provisions. FARFA suggested that the penalty provisions are excessive. This comment has been addressed in TOFGA's comment three, above.

(7) Appeal Provisions. FARFA commented that there are no appeal provisions. Section 12.020 of the Texas Agriculture Code provides the process for administrative penalties, appeals and hearings. Accordingly, those provisions have not been included in the proposal as they are provided statutorily.

A comment was submitted by Susan and Dale Staub on behalf of Amador Farms opposing the registration requirement. Susan and Dale Staub submitted comments stating that a requirement to submit documentation to any agency in government is intrusion which will affect sustainability of the farm. While TDA respects their concerns, TDA reiterates the position above.

Kelly Bhatt submitted a comment regarding removal of the definition of egregious condition and excluding Qualified Exempt farms from having to submit paperwork every other year. These comments have been previously addressed and TDA will not address them at this time.

Tim Milberg submitted a comment on behalf of Millberg Farm. The comment did not address the proposed rules and TDA will not respond to it at this time.

The Department also received eight comments from various individuals. All of the submitted comments were in a form template and substantively the same. The commenters proposed the following:

(1) removing provisions which would require qualified exempt farms to submit paperwork biannually, due to the fact that they were subject to inspection at any time;

(2) removing the definition of "egregious condition," or providing XXX; and

(3) requiring farms to register with the Department because failure to "register" would result in a presumption of coverage under the Produce Safety Rule.

Because the comments submitted have been previously addressed within TOFGA and FARFA's proposals, TDA will not respond to those comments. Additionally, the comments which were not responsive to the proposed rules will not be addressed.

While TDA appreciates the time each of the above individuals took to submit their comments, after careful review and consideration the rules are adopted without changes to the proposal published on June 14, 2019 in the Texas Register.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§11.1 - 11.4

The adoption is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the adoption.

§11.1. Definitions.

In addition to the definitions set forth in 21 CFR Part 112, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Anniversary Date--The last day following two years from the issuance of a Qualified Exemption.

(2) CFR--Code of Federal Regulations.

(3) Department--The Texas Department of Agriculture.

(4) Egregious condition--A practice, condition, or situation on a covered farm or in a packing facility that is undertaken as part of a covered activity that directly causes, or is likely to directly cause:

(A) serious adverse health consequences or death from the consumption of or exposure to covered produce; or

(B) an imminent public health hazard.

(5) FDA--United States Food and Drug Administration.

(6) Inspection--An initial or follow up inspection conducted by TOPS for the purpose of inspecting covered produce, a covered farm, or records related to the Produce Safety Rule.

(7) Produce Safety Rule--21 CFR Part 112: Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption, including any additions, amendments or revisions thereto.

(8) Raw agricultural commodity (RAC)--The term "raw agricultural commodity" is defined in Section 201(r) of the Federal Food, Drug and Cosmetic Act and means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. See 21 U.S.C. §321(4) and 21 CFR §112.3.

(9) TOPS--Texas Office of Produce Safety.

§11.2. Covered Produce.

(a) Covered produce. Covered produce includes produce listed in 21 CFR §112.1.

(b) Produce that is not covered.

(1) The following produce is "not covered" by the Produce Safety Rule under 21 CFR §112.2(a):

(A) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management;

(B) produce that is not a RAC; and

(C) produce that is rarely consumed raw, specifically the produce on the following exhaustive list: Asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries,
sour; chickpeas; cocoa beans; coffee beans; collards; corn; sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts.

(2) A farm which solely produces produce that is "not covered" is not subject to the Produce Safety Rule or this chapter.

(3) Produce is eligible for exemption from the requirements of this part if the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance.

§11.3. Covered Farms.
Per 21 CFR §112.4, the following farms are covered by the Produce Safety Rule and this chapter:

(1) a farm which produces covered produce sold during the previous 3-year period in an amount more than $25,000 (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment;

(2) a farm which has its primary production that is devoted to growing, harvesting (such as hulling or shelling), packing, and/or holding of RAC; or

(3) a farm which performs covered activities, including manufacturing/processing of covered produce on a farm, but only to the extent that such activities are performed on RAC.

§11.4. FDA Coordinated Outbreak Response and Evaluation ("CORE") Network.

(a) Subject to its cooperation agreement with FDA, TOPS will work in coordination with the FDA’s Coordinated Outbreak Response and Evaluation ("CORE") Network to respond to an outbreak which has been identified by CORE.

(b) FDA will be the lead agency conducting on-site visits and inspections related to an outbreak.

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 August 22, 2019.

TRD-201902861
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 11, 2019
Proposal publication date: June 14, 2019
For further information, please call: (512) 463-4075

SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

4 TAC §§11.40 - 11.43

The adoption is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

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 August 22, 2019.

TRD-201902864
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Effective date: September 11, 2019
Proposal publication date: June 14, 2019
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER DD. INSTRUCTIONAL MATERIALS PORTAL

19 TAC §§66.1401, 66.1403, 66.1405, 66.1407

The Texas Education Agency (TEA) adopts new §§66.1401, 66.1403, 66.1405, and 66.1407, concerning the instructional...
materials web portal. The new sections are adopted with changes to the proposed text as published in the February 22, 2019 issue of the Texas Register (44 Tex Reg 768) and will be republished. The new sections implement House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, by specifying procedures by which publishers submit instructional materials for inclusion in the instructional materials web portal.

REASONED JUSTIFICATION: HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, added TEC, §31.081, to require the commissioner to develop and maintain an instructional materials web portal to assist school districts and open-enrollment charter schools in selecting instructional materials. HB 3526 and SB 810 also added TEC, §31.082, which requires an analysis of instructional materials submitted by publishers for inclusion in the web portal, and TEC, §31.083, which requires that the web portal include a repository of open educational resources that school districts and open-enrollment charter schools can access at no cost.

The adopted new rules implement HB 3526 and SB 810 by establishing the instructional materials portal, which is designed to promulgate the use of high-quality materials by providing school districts and open-enrollment charter schools access to free, transparent, and user-friendly information. A pilot phase took place during the spring of 2019, involving a select number of Texas school districts and publishers who volunteered to participate. The information about instructional materials generated during the pilot was distributed only to pilot participants.

Adopted new §66.1401, Definitions, defines terms having meanings specific to proposed new Chapter 66, Subchapter DD. In response to public comment, changes were made at adoption to the definitions in paragraphs (8) and (10), as follows:

Paragraph (8), relating to professional development services, was modified to make clear that open education resource (OER) licensors are required to provide information about their professional development services.

Paragraph (10), relating to evaluation of quality, was modified to clarify the option to assign a summative quality rating.

Adopted new §66.1403, Instructional Materials to be Included in the Instructional Materials Portal, describes the instructional materials that will be included in the instructional materials portal and specifies the considerations TEA will use in determining the sequence and scheduling of quality reviews. This provision enables TEA to cost-effectively manage agency resources and state funds and thereby provide maximum value to school districts and open-enrollment charter schools. In response to public comments, provisions from proposed subsections were reorganized, revised, and relocated at adoption, as follows:

Adopted new subsection (a) was revised to clarify instructional materials that may be included in the evaluation of quality (EoQ) process.

Subsection (b), previously proposed as subsection (a), was revised to delineate instructional materials that may be included in the instructional materials web portal.

Adopted new subsection (c) was added to specify that instructional materials included in the EoQ process shall be included in the instructional materials portal.

Proposed subsection (c), relating to evaluations to determine the extent to which the materials cover the essential knowledge and skills, including English language proficiency standards, was removed from §66.1043 and added, at adoption, as new subsection (f) in §66.1405.

Subsections (d) and (e), previously proposed as subsections (b) and (d), respectively, were re-lettered.

Adopted new §66.1405, Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal, establishes the procedures publishers must use to submit materials for inclusion in the instructional materials portal and details the quality review process. In accordance with TEC, §31.082, each instructional material submitted by a publisher for inclusion in the instructional materials portal must undergo an independent analysis by a private entity contracted by TEA. The adopted new rule informs publishers of the requirements for submission, enabling them to plan and allocate resources appropriately. The adopted new rule also specifies when TEA may not include instructional materials in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources. In response to public comments, provisions have been incorporated at adoption into §66.1405 from §66.1407, as follows:

Subsection (a)(6)(A) was modified to add the word "computer" for clarity. Subsection (a)(7) was modified to incorporate language from proposed §66.1407 and to clarify the conditions under which computer equipment will be provided by publishers for use during the EoQ process and in response to public comment to align the EoQ process with State Board of Education (SBOE) requirements for instructional materials submitted for adoption. Subsection (a)(9) was modified in response to public comment to align the EoQ process with SBOE requirements for instructional materials submitted for adoption. Subsection (a)(13) was modified to clarify that OER licensors are not required to provide a Texas Secretary of State identification number. Subsections (a)(8), (10), (14), and (15) were modified to add applicability to an OER licensor.

Subsection (b) was modified to incorporate language from proposed §66.1407 and to clarify materials that may not be included in the quality evaluation process.

Subsection (c) was modified to incorporate language from proposed §66.1407 and to clarify when publishers may withdraw materials from the quality evaluation process.

Subsection (d) was not modified at adoption.

New subsection (e) was added to incorporate language from proposed §66.1407 and to align the EoQ process with SBOE processes for instructional materials submitted for adoption.

New subsection (f), moved from proposed §66.1403(c), was added to specify, in accordance with TEC, §31.082, that instructional materials submitted for quality review may be evaluated to determine the extent to which the materials cover the essential knowledge and skills identified under TEC, §28.002, for the subject and grade level for which the material is intended to be used. The process by which instructional materials are evaluated regarding the extent to which they cover the essential knowledge and skills is conducted under the authority of TEC, §31.023, and SBOE rules in 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

In addition, the section title was revised from "Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal" to "Procedures for Publishers and
Open Education Resource Licensors to Submit Instructional Materials for Inclusion in the Instructional Materials Portal."

Adopted new §66.1407, Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository, establishes the requirements for OER licensors to submit instructional materials for inclusion in the OER repository, enabling them to plan and allocate resources appropriately. In response to public comments, provisions in proposed subsections (a)(3) through (d) have been incorporated into §61.1403 and §66.1405 and deleted from this section. Subsection (a)(1) was modified to clarify that the subsection applies to the OER repository.

SUMMARY OF COMMENTS AND AGENCY RESPONSES:
The public comment period on the proposal began February 22, 2019, and ended March 25, 2019. A public hearing on the proposal was held at 8:30 a.m. on March 21, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of public comments received and corresponding agency responses.

Comment. Edgenuity Inc. commented that there is no opportunity to review and comment on the pilot process and there is no collaboration between the publishers and the state. The commenter added that the process also does not allow for input by the districts.

Agency Response. The agency disagrees. During the pilot, comments and input were solicited at every step. The agency received feedback on the pilot rubric from more than 450 stakeholders, including, but not limited to, Texas teachers, district and campus administrators, State Board of Education (SBOE) members, regional education service centers (ESCs), numerous Texas associations, and publishers. The agency conducted 24 presentations, 17 focus groups, and several individual phone calls, representing targeted outreach to over 400 stakeholders and 12 different organizations and associations. In addition, the rubric was sent out to multiple agency email lists that included over 43,000 subscribers with a request for feedback. The agency also requested that all ESCs hold presentations and focus groups with all districts in their regions. In addition to collecting feedback on the quality rubric, the pilot itself was designed to collect feedback from publishers about the process in a low-stakes setting prior to launching quality reviews that would be posted on the instructional materials web portal.

Comment. Edgenuity Inc. commented that the proposed rules seem to take away the choice to determine which materials are best for a school district based on their student population. The commenter added that it seems like an effort by the Texas Education Agency (TEA) to take choices away from districts.

Agency Response. The agency disagrees. Texas Education Code (TEC), §31.081(a), states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials under Section 31.101." Therefore, the goal of the instructional materials portal is to provide districts with the information they need when making local purchasing decisions. Districts may choose to use the information provided in the instructional materials portal as a part of their local process, but this is not a requirement.

Comment. Edgenuity Inc. asked if the proposed rules would replace the current Commissioner's list. The commenter also asked if the proposed rules would replace the instructional materials adoption process for textbooks/core instructional materials.

Agency Response. These questions fall outside the scope of this rule. That said, the answer to both of the publisher's questions is no. The instructional materials portal and quality evaluations of instructional materials are authorized by TEC, Chapter 31, Subchapter B-1, §31.081-31.084. The Commissioner's list as authorized by TEC, §31.0231, and the SBOE adoption process authorized by TEC, §31.022, continue and operate in addition to the instructional materials portal.

Comment. Edgenuity Inc. commented that the proposed rules add an additional review process and further complicate what districts need to know before using instructional materials.

Agency Response. The agency disagrees. The quality evaluations provide additional information for local decision makers, and the web portal will aggregate this information into a clear, user-friendly format that will help ensure reviews are easy to access. Further, 100% of districts in the pilot program responded to a survey stating that they would use future reviews of additional products, content areas, and grade levels to help them make purchase decisions best for their school system.

Comment. Edgenuity Inc. asked if the intent of this process is to review all materials, including core, intervention, and supplemental materials. The commenter also added that the proposed rules are not only cost prohibitive for the state but will take funds away from districts to purchase the materials.

Agency Response. The question posed falls outside the scope of this rule. That said, the agency intends to provide information to local school districts that is most relevant to their instructional materials selection needs. Several criteria will be considered when selecting materials to be reviewed, including criteria that reflects the local priorities of districts. Therefore, instructional material quality evaluations may be completed for core, intervention, and supplemental materials based on district need. TEC, §31.081, authorizes the commissioner to "use money from the technology and instructional materials fund to pay any expenses associated with the web portal."

Comment. Edgenuity Inc. commented that the proposed rules seem very similar to the process implemented by Louisiana. The commenter added that Louisiana uses the EdReports process, which is a gating process based on a textbook model not on the way schools teach and students learn. The commenter also stated that the proposed rules should not follow the gating method used by EdReports but, instead, review materials for standards alignment.

Agency Response. The agency disagrees that this process is similar to the process implemented by Louisiana but agrees that it should not be a "gating" process. The agency developed a Texas specific quality rubric and a Texas specific process to support the needs of local school districts. As a result, the scoring methodology associated with the final version of the English language arts and reading (ELAR) quality rubric does not include a "gating process." All materials being reviewed for quality will be reviewed in their entirety across all indicators of the rubric. Additionally, all materials being reviewed for quality will also be reviewed for standards alignment as required by TEC, §31.082.

Comment. Edgenuity Inc. stated that the quality evaluations do not address the way teachers teach and students learn.

Agency Response. The agency disagrees. TEC, §31.082, requires the agency to evaluate the quality of the material and determine the extent to which the material covers the essential knowledge and skills for the subject and grade level for which the
material is to be used. This is completed as a part of the quality review process. In addition, the quality rubric is developed to support research-based practices related to instructional materials. However, the quality rubric is not prescriptive of the pedagogical implementation of materials since that is led by local education agencies and is difficult for publishers to address and control in the materials themselves.

Comment. Edgenuity Inc. expressed concern that the proposed rules should not supplant the district's ability to purchase and certify their own materials.

Agency Response. The agency agrees. TEC, §31.081(a), states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials under Section 31.101." Districts may choose to use the information provided in the instructional materials portal as a part of their local process, but this is not a requirement.

Comment. Edgenuity Inc. stated that additional clarity is needed on the methods used, the reviewers, the review process, and ultimate goal for the program for TEA.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focus on developing publisher processes and procedures. However, the agency seeks to develop a clear and transparent process for stakeholders participating in quality reviews. To this end, an overview of the quality review process is included in information sent to publishers via listservs and webinars. The agency also seeks to answer clarifying questions received from stakeholders in webinars and through the publisher application process.

Comment. Three individuals noted disparity in treatment of publishers and open education resource (OER) licensors, in terms of public review and other requirements, and asked that the agency review proposed rules for policy and legal differences.

Agency Response. The agency disagrees with the perceived disparity to the extent that the commenters imply the treatment differs as a result of the proposed rules. The rules reflect statutory authority and the policies underlying that statutory authority. The agency further disagrees, for the same reason, with the commenters' requested review of the proposed rules. However, §66.1401, §66.1403, §66.1405 and §66.1407 have been revised at adoption to address the concerns of the commenters.

Comment. Three individuals commented that there are two routes for a publisher to have this information listed in the portal, either: 1) a publisher's instructional material is "on the instructional materials list" or 2) the instructional material is "submitted by a publisher for inclusion in the web portal." The commenters added that, in contrast, the quality review under TEC, §31.082, is specifically for each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081. The commenters noted that the language mirrors the second route and neither requires nor authorizes a review for instructional materials already on the state's instructional materials list.

Agency Response. The agency disagrees. TEC, §31.081(a), requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials, which provides the commissioner with authority to review instructional materials included on the state instructional materials list. To meet this requirement, the agency must be able to review materials for quality as outlined in adopted new §66.1403(a). If the agency can only review materials submitted by a publisher for inclusion in the web portal, it would only be providing information to districts about publishers who self-select into the process. This would potentially prevent districts from accessing the information that would assist them in selecting materials. Given this potential problem, materials on the state's instructional materials list may be evaluated for quality if the materials meet the requirements in adopted new §66.1403(a). In addition, in the situation where materials on the list do not meet the requirements in adopted new §66.1403(a), the agency will not conduct a quality review but will still include information about materials on the instructional materials list in the portal to meet the requirements outlined in TEC, §31.081(b)(1).

Comment. Three individuals commented that the review under TEC, §31.082, is specifically for both quality of the material and alignment with the Texas Essential Knowledge and Skills (TEKS). The commenters noted that statute says "and" not "or." The commenters stated that materials on a state instructional materials list already have been thoroughly vetted for TEKS alignment by the SBOE (under TEC, §31.023) or by the commissioner (under TEC, §31.0231). The commenters observed that TEC, §31.082, does not apply to instructional materials on a state instructional materials list, which have been reviewed for alignment.

Agency Response. The agency disagrees with the comment regarding the applicability of TEC, §31.082, to instructional materials on a state instructional materials list. No language in any of the cited statutes validates the commenters' applicability comment. These materials may be evaluated for quality if they meet the requirements in adopted new §66.1403(a), which enables the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that TEC, §31.082, clearly applies only to those publishers who wish to bypass the state's existing listing processes and still have products considered by a district or school. The commenters added that, for example, it may be a route for OER or for national editions or other instructional materials not customized for Texas. The commenters stated that it is not a process, however, to be imposed on or boot-strapped to the other sections on state lists, such as the SBOE list.

Agency Response. The agency disagrees. No provision of TEC, §31.082, validates the comment. TEC, §31.082, requires the commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081. This section does not distinguish between publishers on the "SBOE list" and publishers "bypassing the state's existing list processes," so the agency will apply the section's requirements to all publishers who submit materials to be reviewed for quality. As a part of this process, the analysis must evaluate the quality of the material and determine the extent to which the material covers the essential knowledge and skills for the subject and grade level for which the material is to be used.

Comment. Three individuals asked for a definition of quality in the proposed rule. The commenters stated that if quality is not defined, it is truly in the eye of the beholder and asked how the process would not be subjective. The individuals also asked if evaluators will interpret the rubric uniformly, or could one product be disadvantaged by subjective judgment of one reviewer, for example.
Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. The specific definition of quality and rubric interpretation process falls outside the scope of these rules, which focus on the foundational procedures for the submission of instructional materials as required by TEC, §31.081. However, the agency seeks to provide clarity around these topics for stakeholders. The definition of quality can be found in the sections and indicators included in the quality rubric for each subject area and grade level. This rubric is rigorously reviewed by Texas educators and is available for publisher and public comment prior to its use. The agency supports uniform and fair use of the rubric by providing an extensive training program for reviewers and ongoing monitoring of evaluator performance by team leaders and managers. Additionally, each material is reviewed by a team of trained reviewers that is required to come to consensus when evaluating a product to ensure uniformity in how each quality indicator is being interpreted.

Comment. Three individuals requested a crosswalk between statute and the proposed rule and an explanation of where each component of proposed rule is authorized in law.

Agency Response. The agency disagrees with this comment and its embedded requests. The requested actions are unnecessary, as the rule proposal and adoption already provide sufficient explanations of legal authority. In addition, further clarity is provided on components of the rule as a part of the agency's response to comments through the rulemaking process.

Comment. Three individuals commented that the proposed rule tries to impose the quality review on materials already on the state adoption list and, as such, proposed §66.1403(a)(1)(B)-(C), adopted as §66.1403(a)(1)-(3), is not authorized by nor consistent with statute.

Agency Response. The agency disagrees. Nothing in TEC, §§31.023, 31.2031, 31.081, or 31.082, prevents the application of the quality review process in TEC, §31.082, to instructional materials included on the state adoption list. Information about materials already on the SBOE list will be included on the portal. However, materials on the SBOE list are not evaluated for quality unless they meet the requirements of adopted new §66.1403(a), which allow the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that commissioner rulemaking under TEC, §31.081(c), is limited to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal. The commenters noted that the statute says "may submit," not "shall submit."

Agency Response. The agency agrees. The rules do not require publishers to submit instructional materials for review under TEC, §31.082. The agency notes that the agency may also adopt rules as necessary to implement TEC, Chapter 31, Subchapter B-2, as defined in TEC, §31.084.

Comment. Three individuals commented that they are unaware of statutory authority giving the commissioner authority to make rules for the SBOE.

Agency Response. The agency agrees. The agency has no authority to make rules for the SBOE. The rules in 19 TAC §§66.1401, 66.1403, 66.1405, and 66.1407 are commissioner rules, not SBOE rules.

Comment. Three individuals commented that TEC, §31.082, requires a private entity's independent analysis of each instructional material submitted by a publisher for inclusion in the web portal to "evaluate the quality of the material." The commenters stated that the proposed rule, however, requires "assignment of a quality rating," which is not found in statute.

Agency Response. The agency agrees with the comment to the extent that it quotes the language of TEC, §31.082, and agrees that the words "assignment of a quality rating" are not in the statutory section. However, the agency notes that assignment of a quality rating reasonably arises from the statutory language of TEC, §31.081(a), which states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials" and from the language of TEC, §31.082(b), which requires that the "results of the analysis conducted under Subsection (a)" be included on the web portal. To provide effective assistance, quality evaluation results must be presented in an easily understood and digestible form, which may include a summative rating. The definition of evaluation of quality in §66.1401(10) was modified at adoption to address the assignment of a summative quality rating.

Comment. Three individuals commented that the after-the-fact quality evaluation criteria, creating a rubric for quality evaluation, after materials already have been produced, provides an inherently political process.

Agency Response. The agency disagrees. The creation of a rubric for quality evaluation is outside the scope of this rule. That said, TEC, §31.081(a), states that the purpose of the web portal is to assist school districts and open enrollment charter schools in selecting instructional materials. To adhere to the statute, the agency's primary goal is to evaluate materials based on district need, which may or may not align with the material production timelines of all publishers. However, the agency seeks to create a clear and transparent process for the development and use of quality rubrics so each publisher can use that information in its unique production and development timeline.

Comment. Three individuals commented that quality evaluations should not apply to materials already on the SBOE list.

Agency Response. The agency disagrees that quality reviews do not apply to materials on the instructional materials list. These materials may be evaluated for quality if they meet the requirements in adopted new §66.1403(a), which enables the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that rating instructional materials on after-the-fact criteria after they have been produced, imposes new and subjective criteria.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focus on developing publisher processes and procedures. However, the agency seeks to provide clarity on the rationale for including a summative rating. TEC, §31.081(a), states that the purpose of the web portal is to assist school districts and open enrollment charter schools in selecting instructional materials. To provide effective assistance, quality evaluation results must be presented in an easily understood and digestible form that may include a summative rating. Additionally, evidence from districts about the desire for a summative rating was collected as a part of the pilot process.

Comment. Three individuals commented that the proposed rules run counter to state contracting laws, which provide specification up-front before submission of product.

Agency Response. The agency disagrees. Contracting laws fall outside the scope of these rules. That said, state contracting
laws apply to materials that are included on the SBOE adoption list and are eligible for a state contract. Materials submitted for quality evaluation and inclusion on the portal that have not been submitted for adoption are not eligible for state contracts.

Comment. Three individuals commented that requiring all rubrics to be finalized for a product area, well prior to the submission of materials, would be a method to ensure better integrity of the process, more thoughtful design, and better outcomes for students.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent rubric development timeline to stakeholders. While prior knowledge of the rubric is not required by statute, once future rubric development processes are solidified, the agency will post it on the instructional materials web portal for purposes of transparency.

Comment. Three individuals requested that the agency address each difference between this process and the SBOE and commissioner list processes. The commenters stated that the SBOE process for TEKS alignment and listing is thorough. The commenters stated that the SBOE process provides for public input and comment. The commenters asked what is done with public comment under proposed §66.1405 for example.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to develop a clear and transparent process for publishers participating in quality reviews. To this end, an overview of the TEKS alignment process is included in information sent to publishers via listservs and webinars. The agency also seeks to answer clarifying questions received from stakeholders in webinars and through the publisher application process.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides criteria far enough in advance that publishers can meet the criteria.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent rubric development timeline to stakeholders. While prior knowledge of the rubric is not required by statute, once future rubric development processes are solidified, the agency will post it on the instructional materials web portal for purposes of transparency.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides for Texas educators to conduct the review.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency agrees that Texas educators should conduct the reviews and they are.

Comment. Three individuals commented that many of these important provisions, such as ensuring schools receive timely deliveries, also apply to the commissioner's list under TEC, §31.0231. The commenters expressed concern that for the proposed rules, it is unclear whether or how these items apply, especially those for every publisher or manufacturer of instructional materials in accordance with TEC, §31.151 (Duties of Publishers and Manufacturers), and what positive policy goals such differences achieve.
Agency Response. The agency disagrees. The quality evaluations authorized under TEC, §31.081, and the information about instructional materials included in the instructional materials portal are for the sole purpose of providing reliable information to local education agencies to assist their instructional materials selection.

Comment. Three individuals commented that publishers submitting through the SBOE process have due process to perfect their materials in order to be listed. The commenters asked if the quality review process affords publishers an opportunity to appeal or to address items at issue.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. The agency disagrees with the comment's characterization of the SBOE materials-perfecting processes as constituting legal due process and further notes that the quality review process of TEC, §31.082, does not include such materials-perfecting processes. Furthermore, appeals processes are not required by either TEC, §31.081 or §31.082. However, the agency seeks to create a transparent process for publishers. As a result, the agency has included an appeals process associated with the launch of the ELAR quality reviews. Additionally, as a part of the launch of the ELAR quality reviews, the agency provides an opportunity for publishers to respond to the quality review of their product. This response will be reviewed for accuracy and published on the portal.

Comment. Three individuals asked why a publisher would not be able to withdraw from the review process under proposed §66.1405.

Agency Response. To ensure that the agency provides best value to the citizens of Texas, it must be able to optimally manage its limited resources. Therefore, the agency requires a commitment from publishers to not withdraw from the process after quality evaluations have begun. In response to public comment, §66.1405(c) has been amended at adoption to clarify when publishers may withdraw from the quality evaluation process.

Comment. Three individuals asked how the agency will determine when materials will be reviewed for TEKS and English language proficiency standards (ELPS) alignment. The commenters stated that proposed §66.1403 says materials "may" be reviewed for TEKS alignment and may "when applicable" be reviewed for ELPS alignment.

Agency Response. The agency agrees. Proposed §66.1403(c) was revised and adopted as §66.1405(f) to clarify alignment requirements for TEKS and ELPS.

Comment. Three individuals requested that the agency address timing of reviews and of release of reviews. The commenters stated that proposed §66.1405 provides procedures for submitting materials but does not address timeframes for submission, when the reviews will be released, and whether all reviews will be released at the same time, as is done with SBOE alignment reviews.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent timeline and process for stakeholders. Therefore, once future review timelines and processes are solidified, the agency will post them on the instructional materials web portal.

Comment. Three individuals asked if publishers are required to provide equipment to a private entity. The commenters stated that proposed §66.1405 requires publishers to provide specialized computer hardware or other equipment to a private entity and asked specification on the types of hardware or equipment and clarification on how the agency will determine quantity.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. That said, the agency agrees. If an instructional material submitted for quality evaluation requires specialized equipment to be evaluated (e.g., science lab activities), then the publisher must provide the necessary equipment for the duration of the review period. It would be the job of the publisher in each case to determine the specific hardware or equipment required. Quantity is determined based on the number of reviewers and the number of reviewer management support staff assigned to each material being evaluated. Such assignments are made at the beginning of a review cycle and are disclosed when the solicitation for submission is made to publishers. Section 66.1405(a)(7) has been amended at adoption to clarify.

Comment. Three individuals commented that the proposal increases costs to regulated persons.

Agency Response. The agency disagrees. Equipment will be returned to the publisher after the review period.

Comment. Three individuals requested that the agency address criteria for an "independent analysis." The commenters stated that TEC, §31.082, requires the commissioner to contract with a private entity to conduct an "independent analysis" and asked if "independent" conflicts with proposed §66.1405(b)(1). The commenters noted that the proposed rule likely did not mean to allow the "independent evaluator" to be an OER author, to submit and evaluate its own OER materials, and to evaluate a competitor's products.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. That said, the agency agrees. Section 66.1405(b)(1) has been amended at adoption to clarify.

Comment. Three individuals requested that the agency change the method of financing for paying for the quality review to a source of funds that does not take money from items provided to children. The commenters stated that TEC, §31.021, states the instructional materials and technology fund shall be used to "pay the expenses associated with the instructional materials web portal developed under Section 31.081." The commenters noted that it does not, however, say expenses associated with the quality review under TEC, §31.082.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. That said, TEC, §31.081(a), states that the purpose of the web portal is to "assist school districts and open-enrollment charter schools in selecting instructional materials," and TEC, §31.082, requires that the analysis of instructional materials "evaluate the quality of the material." To provide effective assistance to school districts and to conform to the requirement in TEC, §31.082, that a "private entity" conduct the analysis of instructional materials, it is appropriate to use the same funding source to fulfill the requirements of TEC, §31.082.

Comment. Three individuals commented that the statute does not say "any expenses" associated with the web portal, as stated in the proposed rules preamble.
Agency Response. The agency disagrees. TEC, §31.081(e), version as added by Acts 2017, 85th Legislature, Chapters 581 and 785, states, "the commissioner shall use money in the state technology and instructional materials fund to pay any expenses associated with the web portal."

Comment. Three individuals commented that the agency consider negotiated rulemaking, stating that multiple stakeholders will be significantly affected by this proposed rulemaking. The commenters noted that Chapter 208 of the Government Code (Negotiated Rulemaking Act) outlines the procedure for negotiated rulemaking and suggested this method as a way to bring parties together and achieve consensus.

Agency Response. The agency disagrees. The agency considers the standard rulemaking process sufficient for these rules.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §31.023, which requires the State Board of Education to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted to be included on the list of adopted instructional materials; TEC, §31.081, as added by House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials; TEC, §31.081(c), which requires the commissioner to adopt rules to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal; TEC, §31.082, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081; TEC, §31.083, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to include in the web portal developed under TEC, §31.081, a repository of open educational resources and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost; and TEC, §31.084, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner to adopt rules as necessary to implement the provisions of TEC, Chapter 31, Subchapter B-2.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.023; and §§31.081, 31.082, 31.083, and 31.084, as added by House Bill 3526 and Senate Bill 810, 85th Texas Legislature, Regular Session, 2017.

§66.1401. Definitions.

For purposes of this subchapter, the following words and terms shall have the following meanings.

(1) Classroom set—This term refers to the components of an instructional material, including, but not limited to, the Texas Essential Knowledge and Skills-bearing components sufficient for use by a teacher and 25 students.

(2) Inclusion—This term means the presentation or display of instructional materials, open education resources (OERs), and related information in the instructional materials portal or on other websites where information is publicly available to which the instructional materials portal links.

(3) Instructional materials—This term has the meaning assigned by Texas Education Code (TEC), §31.002(1), and §66.27(a) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials).

(4) Open education resource—This term has the meaning assigned by TEC, §31.002(1-a) and §31.083.

(5) Open education resource submission form—This term refers to a document generated and approved by the Texas Education Agency (TEA) on which an OER licensor, a publisher, or TEA records information required for submission of OERs to the repository.

(6) Open education resource submission process—This term refers to the procedures followed by an OER licensor, a publisher, or TEA when submitting OERs to the OER repository in the instructional materials portal.

(7) OER licensor—This term means the individual or entity that offers an OER under the terms of an intellectual property license as specified in TEC, §31.083. Publishers and TEA may be OER licensors.

(8) Professional development services—This term means the training and instruction provided by a publisher or its designee or an OER licensor for the purpose of teaching teachers and other educators how to use the publisher's or OER licensor's instructional materials.

(9) Publisher—This term means the developer or distributor of instructional materials and has the meaning assigned by TEC, §31.002(2).

(10) Evaluation of quality—This term refers to the independent analysis of instructional materials based on their quality. This includes the option to assign a summative quality rating to the materials for publication in the instructional materials portal.

(11) Evaluation of quality submission form—This term refers to a document generated and approved by TEA in which publishers record information required for submission of instructional materials for an evaluation of quality (EOQ).

(12) Evaluation of quality submission process—This term refers to the procedures followed by publishers when submitting instructional materials for an EOQ.

§66.1403. Instructional Materials to be Included in the Instructional Materials Portal.

(a) Instructional materials may be included in the evaluation of quality (EOQ) process if:

(1) a publisher or open education resource (OER) licensor submits instructional materials through the EOQ submission process;

(2) a member of the State Board of Education requests in writing that an instructional material be included in an EOQ; or

(3) more than 10% of local education agencies request in a format determined by the Texas Education Agency (TEA) that an instructional material be included in an EOQ.

(b) The following instructional materials may be included in the instructional materials web portal:

(1) instructional materials submitted by TEA; and

(2) OERs submitted directly to TEA through the OER submission process for inclusion in the OER repository. OER materials may not be included in the repository unless:

(A) a publisher or other OER licensor submits such materials through the EOQ submission process;

(B) TEA submits such materials for which TEA is the OER licensor for the purposes of being reviewed for quality; or
(C) the materials are submitted in accordance with subsection (a)(2) or (3) of this section.

(c) Instructional materials included in the EoQ process shall be included in the instructional materials portal.

(d) TEA may determine the sequence and scheduling of quality reviews based on the following considerations:

(1) the availability and allocation of resources for completion of quality reviews;
(2) the needs of public schools in Texas;
(3) the timing of submission to TEA; and
(4) other factors deemed relevant by TEA to maximize the effectiveness of the quality review process.

(e) TEA may exclude from the quality review process a submission that does not constitute an instructional material.


(a) A publisher or an open education resource (OER) licensor that submits instructional materials for an evaluation of quality (EoQ) shall:

(1) submit a completed Texas Education Agency (TEA)-generated EoQ submission form by the deadline stated in the submission form. TEA may adapt the submission form, as it deems necessary, to develop and maintain the instructional materials web portal;
(2) sign a set of assurances at the time of submission assuring compliance with the requirements listed in this subchapter;
(3) submit instructional materials that are:
   (A) in electronic format;
   (B) complete and include all content to be used in the final product; and
   (C) fully functional for review purposes;
(4) ensure submitted instructional materials remain final and unchanged throughout the quality review process, unless otherwise specified by TEA;
(5) make submitted instructional materials available for reviewers for the duration of a review period to be determined by TEA and made known to publishers and OER licensors;
(6) include information required for reviewers to complete electronic reviews of instructional materials, including, but not limited to:
   (A) computer hardware and system requirements for the review of any item included in an instructional material submission; and
   (B) information for online products, including internet location, keycodes, passwords, and other login information required to ensure access to the materials being reviewed throughout the review period;
(7) provide specialized computer hardware or other equipment necessary to use an instructional material as intended by a student and/or teacher. Such equipment will be returned to the publisher or OER licensor at the conclusion of the review period. Such equipment must be provided:
   (A) for the duration of the review period; and
   (B) in a quantity to be determined by TEA and communicated to the publisher or OER licensor at the time the materials are submitted for review;
(8) provide the following information in a format determined by TEA and communicated to publishers or OER licensors by way of the EoQ submission form regarding the instructional materials submitted:
   (A) computer hardware and system requirements for use of the materials;
   (B) availability and description of professional development services;
   (C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation), which can be satisfied by a report prepared for submission to the SBOE; and
   (D) a complete description of all student and teacher components;
(9) provide accurate and up-to-date pricing information for each instructional material in a form and format to be determined by TEA and communicated to publishers and OER licensors in the application for submission of materials;
(10) make samples of instructional materials available for public review during a review period determined by TEA, as deemed necessary by TEA and made known to publishers or OER licensors by TEA;
(11) assume responsibility for all expenses incurred by participation in the review process, as TEA does not guarantee return of sample instructional materials;
(12) acknowledge that TEA and its designee have final authority for determining all quality ratings;
(13) with the exception of OER licensors, provide evidence in the form of an identification number provided by the Texas Secretary of State proving that the publisher is approved to conduct business in the state of Texas;
(14) verify that the publisher or OER licensor is the copyright owner of the instructional materials; and
(15) verify that the individual submitting the materials is legally authorized to act on behalf of the publisher or OER licensor.

(b) TEA may not include materials in the quality evaluation process if:

(1) materials have been authored by a current employee of TEA, unless those materials are open education resources;
(2) materials have been authored by the TEA’s designated independent evaluator; or
(3) reviewers lack capacity to evaluate all submitted materials.

(c) Publishers or OER licensors that submit materials for quality evaluation may not withdraw those materials from the review process after the review process is underway as communicated by TEA.

(d) This section does not apply to or otherwise limit the submission of instructional materials by TEA for inclusion in the instructional materials portal.

(e) Publishers or OER licensors that submit materials for quality evaluation may not directly or indirectly contact reviewers before
or during the review process if such contact or solicitation relates to
the EoQ process.

(1) The TEA may satisfy the requirement set forth in Texas Education Code (TEC), §31.082(a)(2), by:

(1) conducting Texas Essential Knowledge and Skills (TEKS) coverage reviews and English Language Proficiency Standards (ELPS) coverage reviews, for subject areas in which ELPS exist, of instructional materials that have been submitted for an EoQ; or

(2) using the results of TEKS coverage reviews and ELPS coverage reviews, for subject areas in which ELPS exist, of materials under consideration for adoption under a current proclamation or adopted in a previous proclamation as authorized by TEC, §31.022, and 19 TAC Chapter 66, Subchapter B, of this title (relating to State Adoption of Instructional Materials).


An open education resource (OER) licensor that submits OERs for inclusion in the OER repository shall:

(1) submit a completed Texas Education Agency (TEA)-generated OER submission form, which TEA may adapt, as it deems necessary, to develop and maintain the OER repository; and

(2) sign a set of assurances at the time of submission assuring compliance with the requirements in this subchapter.

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 August 21, 2019.

TRD-201902857
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 10, 2019
Proposal publication date: February 22, 2019
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 5. STATE BOARD OF DENTAL EXAMINERS
CHAPTER 102. FEES
22 TAC §102.1
The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §102.1, concerning fees. This amendment to the existing rule will clarify the biennial nature of renewals for several license/registration types, establish a standalone nitrous oxide monitoring category for dental assistants pursuant to 22 TAC §114.4, and enable the Board to assess appropriate fees in a responsive manner for the prescription monitoring program, Texas.gov internet portal, and query and monitoring of practitioners through the National Practitioner Data Bank. This amendment is adopted with no changes to the proposed text as published in the July 19, 2019, issue of the Texas Register (44 TexReg 3603), and will not be republished.

No comments were received by the agency after publication of this rule.

This rule is adopted 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, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

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 August 23, 2019.

TRD-201902876
Alex Phipps
General Counsel
State Board of Dental Examiners
Effective date: September 12, 2019
Proposal publication date: July 19, 2019
For further information, please call: (512) 305-9380

CHAPTER 104. CONTINUING EDUCATION
22 TAC §104.2
The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §104.2, concerning providers of continuing education. This amendment will clarify the process for addition or removal of approved providers from the Board’s list, and will establish criteria for the Board or a committee of the Board to apply when considering addition, removal, or classification of providers. This amendment is adopted with no changes to the proposed text as published in the July 19, 2019, issue of the Texas Register (44 TexReg 3604), and will not be republished.

No comments were received by the agency after publication of this rule.

This rule is adopted 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, and Texas Occupations Code §257.005, which directs the Board to develop a process to evaluate and approve continuing education courses and evaluate the overall effectiveness of programs.

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 August 23, 2019.

TRD-201902876
Alex Phipps
General Counsel
State Board of Dental Examiners
Effective date: September 12, 2019
Proposal publication date: July 19, 2019
For further information, please call: (512) 305-9380
PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers (Board) adopts an amendment to §133.69 concerning Waiver of Examinations without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3423). The text of the rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The examination on the Fundamentals of Engineering (FE) is considered a foundational qualification in the licensure of an engineer. The Board has authority to waive the exam for applicants who possess sufficient education and experience credentials. The adopted change to §133.69(d) limits an applicant from applying for a waiver of the FE exam if the applicant has failed the exam three or more times in any jurisdiction. This amendment does not prohibit an applicant from retaking the exam to achieve a passing score.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period ended August 4, 2019.

The Board received one comment regarding the change to §133.69(d). A commenter asked for a delay to enact this rule change. The Board disagrees with the comment and responds that an additional delay is not necessary for the implementation of this rule as it has been under consideration by the Board since November 2018. No changes were made to the rule as proposed.

STATEMENT OF AUTHORITY

This amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rules, regulations or bylaws necessary to perform its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state. It is also adopted under the authority of §1001.304, which authorizes the Board to administer examinations and §1001.305, which authorizes the Board to waive, by rule, all or part of an examination.

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 August 26, 2019.
TRD-201902888
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 15, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 440-7723

PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.5

The Texas Medical Board (Board) adopts amendments to §165.5, concerning Transfer and Disposal of Medical Records with non-substantive changes, described below, to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3424).

The amendments to §165.5 update and modernize the notice requirements when a physician leaves from or relocates a practice by giving physicians options as to methods of patient notification. Specifically, in subsection (b)(2), additional language is added to allow notices to be posted on the physician’s website and for the use of electronic communications to notify patients. In subsection (f), the amendments provide exceptions from notice provisions for certain types of medical providers.

These adopted amendments to §165.5 help modernize the existing rule and allow physicians various mechanisms to notify patients, which promotes continuity of care, and eliminates the notice requirement for certain physicians.

The Board received public written comments from the Texas Medical Association (TMA).

TMA complains that the rule still requires physicians to utilize more than one method of notice and that certain forms of notice may not be feasible due to the lack of an office, as in telemedicine.

The Board’s response: The Board understands, but has determined that allowing physicians multiple options under each notice requirement will better serve the public by ensuring adequate notice to patients while causing little inconvenience to the physician. Therefore, the Board declines making additional changes in this regard.

TMA also suggests that additional language should be added to subsection (b)(2)(C), relating to email notices to patients, to ensure that such notice is transmitted confidentially and in a manner that is compliant with HIPAA and state and federal law.

The Board’s response: The Board agrees with TMA that the words “in a manner that is compliant with state and federal law” should be added to subsection b(2)(C)(ii) and adopts the rule amendment with the non-substantive change as described.

TMA requests that the Board include a safe harbor provision for physicians who make a “good faith effort” to notify patients in the manner required, but who are prevented from complying with the requirements by the owners of the practice.

The Board’s response: The Board declines TMA’s request to create such provision, as subsection (c) already provides a prohibition against interference by remaining physicians. Additionally, if a physician is found to be in violation of the notice requirements and is subject to investigation, the physician may present evidence of any “good faith efforts” that may have been thwarted by remaining physicians. Therefore, no additional carve out provision is necessary.

TMA asserts that the exceptions delineated in subsection (f)(2) and (3) will be construed by courts to mean that only those providing specific services described in (f)(3) will be deemed as ex-
empt from providing notice in the settings described under subsection (f)(2).

The Board’s response: The Board believes that the proposed amendment, as written, is clear and the TMA’s argument about judicial interpretation is speculative. The Board maintains that there is an "or" separating subsection (f)(2) and (f)(3), which clearly refutes TMA’s argument and no further clarification is necessary.

TMA suggests further clarification that an outpatient clinic, associated with a hospital, is not included in the exception under subsection (f)(2)(A).

The Board’s response: The Board disagrees with TMA because the definition of "hospital" as defined in the Texas Occupations Code and the Texas Health & Safety Code, clearly does not include out-patient clinics associated with the hospital. Therefore, no additional language is necessary.

Lastly, TMA requests that "pathology services in a setting described in paragraph (2) of this subsection" be added to subsection (f)(3) as an exception.

The Board’s response: The Board agrees with TMA’s suggestion and adopts the rule amendment with the additional language, a non-substantive change, as described.

For these reasons, the Board adopts the amendments with above-described non-substantive changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3424), and the amendments will be republished.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§165.5. Transfer and Disposal of Medical Records.

(a) Required Notification of Discontinuance of Practice. Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she is responsible for:

1. ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and

2. notifying the board when they are terminating practice, retiring, or relocating, and therefore no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.

(b) Method of Notification.

1. Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records or have their records transferred.

2. Notification shall be accomplished by:

(A) either:

   i. posting such notice on the physician's or practice website; or

   ii. publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area; and

(B) placing written notice in the physician's office; and

   (C) notifying patients seen in the last two years of the physician's discontinuance of practice by either:

      i. sending a letter to each patient; or

      ii. sending an email to each patient, in a manner that is compliant with state and federal law.

3. A copy of the posted notices shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

4. Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.

1. Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

2. A physician, physician group, or organization described in §165.1(b)(6) of this title (relating to Medical Records) may not withhold information from a departing physician that is necessary for notification of patients, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(d) Voluntary Surrender or Revocation of Physician's License.

1. Except as provided for in subsection (f) of this section, physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must notify their patients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

2. Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their medical records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.

(f) Exceptions to Required Notification of Discontinuance of Practice. A physician is not required to provide notice of his or her discontinuation of practice to patients as required in subsection (b) of this section if the physician:

1. treated the patient while in a locum tenens position at a practice location for a period of no longer than six months at that location. For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services;
(2) only treated the patient in the following settings:
   (A) a hospital, as defined under Texas Occupations Code Section 157.051(6);
   (B) an emergency room;
   (C) a birthing center; or
   (D) an ambulatory surgery center; or

(3) only provided the following:
   (A) anesthesia services in a setting described in paragraph (2) of this subsection; or
   (B) radiology services based on an order by a treating physician or in a setting described in paragraph (2) of this subsection; or
   (C) pathology services in a setting described in paragraph (2) of this subsection.

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 August 21, 2019.
TRD-201902835
Scott Freshour
General Counsel
Texas Medical Board
Effective date: September 10, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 305-7016

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.8

The Texas Medical Board approves the adoption of the repeal of §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements. The repealed rule is being adopted as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3426). The repealed rule is not being republished.

No written comments were received regarding the repeal of §193.8. No one appeared in person to testify regarding the rules at the public hearing on August 16, 2019.

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001.

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 August 20, 2019.
TRD-201902821
Scott Freshour
General Counsel
Texas Medical Board
Effective date: September 9, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 305-7016

22 TAC §193.17

The Texas Medical Board (Board) adopts amendments to §193.17, concerning Nonsurgical Medical Cosmetic Procedures. The amendments to §193.17 are being adopted without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3427). The adopted amendments will not be republished.

The amendments require posting of notice to patients of the identity and license number of the physician supervisor at a facility providing nonsurgical cosmetic procedures. It also requires posting of notice of how and where to file a complaint against a physician or physician assistant involved at these facilities. The rule enhances patient safety and awareness through increased transparency and accountability of the medical professionals involved in these types of medical procedures and facilities.

Written comments were received regarding the amendments to §193.17. No one appeared in person to testify regarding the rules at the public hearing on August 16, 2019.

Two written comments were received regarding §193.17. One comment was from Texas Aesthetic Nurses Coalition and supported the rule. One comment was from the Texas Medical Association (TMA). TMA generally supported the posting of notice to patients. But TMA claimed the rule, as written, creates confusion and a burden on a physician.

TMA complains that the rule could be viewed as requiring two different types of notice based on a reference to Chapter 178 in one section and Rule 178.3 in another section.

The Board’s response: The Board understands, but has determined that when read as whole the rule is easily understood. The text clearly delineates the notice serving a two-fold purpose, how to file a complaint and identifying the practitioner who would be subject of a complaint.

TMA also suggests that the terms “each public area and treatment room or area” is vague. TMA urges posting in an “prominent location.”

The Board’s response: The Board disagrees with TMA. The rule provides more clarity as to where posting is required than “a prominent location.” The rule insures that notices will be posted with increased visibility and in areas most likely to be seen by patients.

TMA complains that the rule requires posting by the facility rather physician. TMA states the rule lacks clarity and could expose physicians to violations for “technical insufficiencies.”

The Board’s response: The Board does not understand what TMA means by technical insufficiencies. But Board disagrees with TMA. TMA is correct that TMB regulates physicians and not facilities. However, these facilities cannot operate with having a supervising physician. When a physician agrees to become involved at these facilities they assume responsibility for all medical procedures, including non-surgical cosmetic procedures, performed at the facility. The rule is very clear that if a physician chooses to become involved with a facility that information must be made readily known to the patients, so in the event of untoward events or other potential violation the responsible physician is readily identified.

Rule §193.17 is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for
the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 August 20, 2019.
TRD-201902823
Scott Freshour
General Counsel
Texas Medical Board
Effective date: September 9, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 305-7016

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.14

The Texas State Board of Pharmacy adopts a new rule §281.14, concerning Vendor Protest Procedures. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3216). The rule will not be republished.

The new rule establishes policy and procedures for resolving vendor protests relating to purchasing issues, as required by section 2155.076 of the Government Code.

No comments were received.

The rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 August 21, 2019.
TRD-201902848
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

22 TAC §281.15

The Texas State Board of Pharmacy repeals §281.15, concerning Vehicle Inscription Information. The rule is repealed without changes to the text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3218) and the rules will not be republished.

The repeal of §281.15 provides for a more organized subchapter by moving the language from the previous §281.15 to an amended §281.19, allowing the agency to adopt a new §281.15, concerning Negotiated Rulemaking.

No comments were received.

The rule is repealed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 August 21, 2019.
TRD-201902848
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

22 TAC §281.15

The Texas State Board of Pharmacy adopts new rule §281.15, concerning Negotiated Rulemaking. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3218).

The new rule establishes policy and procedures for the use of negotiated rulemaking for the adoption of board rules in appropriate situations, as required by section 554.0011 of the Pharmacy Act.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code) and §481.003 of the Texas Controlled Substances Act (Chapter 481, Texas Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §481.003 of the Texas Controlled Substances Act as authorizing the agency to adopt rules to administer §§481.075 - 481.0766 of the Texas Controlled Substances Act.
The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 August 21, 2019.
TRD-201902849
Allison Vordenbaum Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

22 TAC §281.16

The Texas State Board of Pharmacy adopts new rule §281.16, concerning Alternative Dispute Resolution. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3219).

The new rule establishes policy and procedures for the use of alternative dispute resolution to resolve internal and external disputes, as required by section 554.0011 of the Pharmacy Act.

No comments were received.

The rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 August 21, 2019.
TRD-201902850
Allison Vordenbaum Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

22 TAC §281.19

The Texas State Board of Pharmacy adopts amendments to §281.19, concerning Restrictions on Assignment of Vehicles. These amendments are adopted with changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3220). The Board corrected the agency that vehicles may be registered to under §554.009 to be the Texas Department of Motor Vehicles.

The amendments, if adopted, update the section title, add updated vehicle inscription information (formerly located in §281.15), and remove outdated references to an agency pool car.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.19  Vehicles.

(a)  Vehicle Inscription Information.

(1)  Exemption. As specified in §554.009 of the Act and §721.003 of the Transportation Code, vehicles assigned to or used by the compliance or investigation divisions for enforcement of pharmacy laws and rules are exempt from bearing the inscription required by §721.002 of the Transportation Code. These vehicles are to be used primarily in the inspection of pharmacies and the investigation of violations of state and federal laws and rules relating to the practice of pharmacy. In addition, as specified in §554.009 of the Act, the vehicles may be registered with the Texas Department of Motor Vehicles in an alias name for investigative personnel.

(2)  Purpose. The purpose of exempting these vehicles from the inscription requirements of §721.002 of the Transportation Code is to increase the effectiveness of agency field employees in detecting and investigating violations of state and federal laws relating to the practice of pharmacy, thereby allowing compliance and investigative personnel to accomplish their tasks undetected, and to provide a greater degree of safety for these staff and the state property being used in the enforcement and a greater degree of case integrity.

(b)  Restrictions on Assignments of Vehicles.

(1)  Each agency vehicle will be assigned to an individual field employee.

(2)  The agency may assign a vehicle to a board member or an individual administrative or executive employee:

   (A)  on a temporary basis if field personnel are not available to assume responsibility for the car; or

   (B)  on a regular basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

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 August 21, 2019.
TRD-201902851
Allison Vordenbaum Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010
CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.11

The Texas State Board of Pharmacy adopts amendments to §283.11, concerning Examination Retake Requirements. These amendments are adopted without changes to the proposed text as published in the June 28, 2018, issue of the Texas Register (44 TexReg 3221).

The amendments update the examination retake requirements and remove outdated references to an examination retake committee.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee. The fee for an initial license shall be $507 for the initial registration period.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy license shall be $504 for the renewal period.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate pharmacy license renewal certificate shall be $20. The fee for issuance of an amended pharmacy license renewal certificate shall be $100.

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 August 21, 2019. TRD-201902853
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. These amendments are adopted with changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3222). The Board adjusted the amount of the fees based on updated information.

The amendments increase pharmacy license fees based on expected expenses.

The Board received comments from the Alliance of Independent Pharmacists of Texas requesting more information on the allocation of funds.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

44 TexReg 4872  September 6, 2019  Texas Register
(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be $332 for a two-year registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be $329 for a two-year registration.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) of this section.

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 August 21, 2019.
TRD-201902854
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: October 1, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 305-8010

22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the June 28, 2019, issue of the Texas Register (44 TexReg 3223).

The amendments clarify the definition of initial license period, remove an outdated reference to the Commission for Certification in Geriatric Pharmacy, and correct grammatical errors.
No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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 August 21, 2019.

TRD-201902855
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: September 10, 2019
Proposal publication date: June 28, 2019
For further information, please call: (512) 305-8010

TITLE 25. HEALTH SERVICES
PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS
CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH
25 TAC §§703.3, 703.10, 703.14, 703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 TAC §§703.3, 703.10, 703.14, and 703.25 without changes to the proposed amendments as published in the May 31, 2019, issue of the Texas Register (44 TexReg 2698), therefore, the rules will not be republished. The amendments are related to Request for Applications modifications on the Institute's website, leave of absences, no cost extension requests review and approval, and approval of grantee budget changes and transfers.

Reasoned Justification
In §703.3(b), the proposed change clarifies that modifications to Request for Applications (RFAs) will be available on CPRIT’s website. The amendment to §703.10(c)(22) requires a grant recipient to request approval for a Principal Investigator, Program Director, or Company Representative’s temporary leave of absence. Proposed changes to §703.14(c)(3) eliminate automatic approval of a grant recipient's first no cost extension request. Finally, the amendment to §703.25(e) clarifies when a grant recipient's budget change or transfer is automatically approved and explains that CPRIT may review and reverse approval, depending on certain circumstances.

Summary of Public Comments and Staff Recommendation
CPRIT received no public comments regarding the proposed amendments to §§703.3, 703.10, 703.14, and 703.25.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 August 22, 2019.
TRD-201902859
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: September 11, 2019
Proposal publication date: May 31, 2019
For further information, please call: (512) 305-8487
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.25

The Texas Board of Criminal Justice adopts amendments to §151.25, concerning Tobacco and Vapor Products, without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3431); therefore, the rule will not be republished.

The adopted amendments are necessary to update the language in light of changing technology, to add interns and volunteers to the scope of the rule, and to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 494.010.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902879
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: September 15, 2019
Proposal publication date: July 5, 2019
For further information, please call: (936) 437-6700

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.4

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.4 without changes to the text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3777) and will not be republished. The amendment makes a non-substantial edit to an acronym in the Commission’s list of recognized accrediting bodies. The amendment is necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendment is made in accordance with the Commission’s accreditation authority under Tex. Code Crim. Proc. art. 38.01 §4-d.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-d, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter §651.4.

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 August 26, 2019.

TRD-201902891
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: September 15, 2019
Proposal publication date: July 26, 2019
For further information, please call: (512) 936-0661

* * *
The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.203 and §651.207 without changes to the text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3779) and will not be republished. The amendments remove document examination from the list of forensic disciplines subject to Commission licensing requirements. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to these sections.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter §651.203 and §651.207.

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 August 26, 2019.
TRD-201902892
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Effective date: September 15, 2019
Proposal publication date: July 26, 2019
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37 TAC §651.206

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.206 without changes to text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3783) and will not be republished. The amendments expand the list of exemptions under which a forensic analyst is not required to comply with forensic analyst license requirements. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code Chapter §651.206.

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 August 26, 2019.
TRD-201902894
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: September 15, 2019
Proposal publication date: July 26, 2019
For further information, please call: (512) 936-0661

37 TAC §651.213

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.213, concerning forensic analyst licensing of military service members, veterans and spouses, without changes to the text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3785). The rule text will not be republished.

The amendments relate to the forensic analyst licensing of military service members, veterans and spouses to provide an option for Commission recognition of a license from another state with similar requirements for military spouses in response to the 86th Legislature's SB-1200. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code Chapter 651.213.

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 August 26, 2019.
TRD-201902894
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: September 15, 2019
Proposal publication date: July 26, 2019
For further information, please call: (512) 936-0661

37 TAC §651.216, §651.217

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.216 and §651.217 with changes to the text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3786) and will be republished. The change is to delete duplicative wording. The amendments address the 86th Legislature's passage of SB-284 which amended Article 38.01 §4-c, Code of Criminal Procedure relating to disciplinary proceedings applicable to a licensed forensic analyst and address the 86th Legislature's passage of HB-1342 which amended Chapter 53, Occupations Code relating to consequences of criminal convictions and licensure. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-c, Code of Criminal Procedure with respect to disciplinary action by the Commission against a forensic analyst license holder.
Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-c, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter 651.216 and 651.217.

§651.216. Disciplinary Action.

(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.

(b) Professional Misconduct Finding. On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter (relating to Definitions) and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission under Article 38.01, Code of Criminal Procedure, the Commission may:

(1) revoke or suspend the person's license;
(2) refuse to renew the person's license;
(3) reprimand the license holder; or
(4) deny the person a license.

(c) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probationed, the Commission may require the license holder to:

(1) report regularly to the Commission on matters that are the basis of the probation; or
(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.

(d) Disciplinary Proceedings by the Judicial Branch Certification Commission. The Commission shall give written notice by certified mail of a determination described by subsection (a) of this section to a license holder who is the subject of the determination. The notice must:

(1) include a brief summary of the alleged misconduct or violation;
(2) state the disciplinary action taken by the Commission; and
(3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of the disciplinary action, or both.

(e) Hearing Request. Not later than the 20th day after the date the license holder receives the notice under subsection (d) of this section, the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.

(f) Judicial Branch Certification Commission Hearing. If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the license holder committed professional misconduct or violated this subchapter or a Commission rule or order under this subchapter. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(g) License Status.

(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the Judicial Branch Certification Commission or Administrative Regional Presiding Judges.

(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:

(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and
(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges. However, the term or duration of a license is not tolled if, during review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges, the licensee engages in the activity for which the license was issued.

(h) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In an appeal of a disciplinary action by the Commission, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(i) Informal Disposition of Disciplinary Action Appeals. Unless precluded by law, an informal disposition may be made of an appeal of a disciplinary action by the Commission by:

(1) stipulation;
(2) agreed settlement;
(3) consent order; or
(4) default.

§651.217. Ineligibility for License Based on Criminal Conviction.

(a) A proceeding before the Commission to establish factors required to be considered under this section is governed by Chapter 53, Government Code. Any appeals proceeding in response to disciplinary action taken by the Commission in the form of license denial, revocation, suspension or other action taken by the Commission under
this subsection is governed by Article 38.01 §4-c, Code of Criminal Procedure.

(b) Guidelines for consideration of criminal convictions. If an applicant has a criminal conviction above a Class C misdemeanor, the applicant may not be qualified to hold a forensic analyst license.

(1) Convictions that may trigger a denial. Subject to paragraph (7) of this subsection, the Commission may suspend or revoke a forensic analyst license, disqualify a person from receiving a license, refuse to renew a person's license, or deny to a person the opportunity to take the general forensic licensing examination on the grounds the person has been convicted of:

(A) an offense that directly relates to the duties and responsibilities associated with an analyst's license;

(B) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) a sexually violent offense as defined by Article 62.001, Code of Criminal Procedure.

(2) A forensic analyst license holder's license may be revoked on the license holder's imprisonment following a felony conviction, felony community supervision, revocation of parole, or revocation of mandatory supervision.

(3) An offense from another state containing elements substantially similar to the enumerated offenses under the Texas Penal Code shall be considered under this section the same way as the offense would have been considered had it been committed in Texas.

(4) Offenses that apply to category paragraph (1)(A) of this subsection because they directly relate to the duties and responsibilities associated with an analyst's license may include, but are not limited to:

(A) misrepresentation (e.g., fraud, extortion, bribery, theft by check, and deceptive business practices);

(B) failure to register as a sex offender (as required by the Texas Code of Criminal Procedure, Chapter 62);

(C) property crimes, such as theft or burglary;

(D) crimes against persons, such as homicide, kidnapping, and assault;

(E) drug crimes, such as possession;

(F) multiple DWI and DUI crimes;

(G) all felony convictions; and

(H) Misdemeanors above a Class C misdemeanor and felony convictions considered by Texas courts to be crimes of moral turpitude.

(5) Consequences. In the event of a criminal conviction, the Commission may take one of the following courses of action:

(A) declare a prospective applicant unsuitable for a license;

(B) deny a renewal application for an existing license;

(C) revoke or suspend an existing license; or

(D) deny a person the opportunity to take the general forensic analyst licensing examination.

(6) Determining whether conviction directly relates to the duties and responsibilities associated with the analyst's license. In determining whether a criminal conviction directly relates to the duties and responsibilities associated with the analyst's license, the Commission shall consider each of the following factors:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the analyst's occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the analyst's work; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the analyst's work.

(7) Additional factors for consideration after determining conviction directly relates to occupation. If the Commission determines under paragraph (6) of this subsection that a criminal conviction directly relates to the duties and responsibilities associated with the analyst's license, the Commission considers the following in determining whether to take an action authorized by paragraph (1) of this subsection in addition to the factors listed in paragraph (6) of this subsection:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) other evidence of the person's fitness, including letters of recommendation.

(8) An applicant has the responsibility, to the extent possible, to obtain and provide to the Commission the recommendations described by paragraph (7)(G) of this subsection.

(c) Notice and Review of Suspension, Revocation or Denial of License. If the Commission suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense, the Commission shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under paragraphs (6) or (7) of this subsection that served as the basis for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by §651.216(d)-(f) of this title (relating to Disciplinary Action); and

(3) the earliest date the person may appeal the action of the Commission.

(d) Presiding Officer or Designee Authority to Approve Applications. The Commission's Presiding Officer or Designee may unilaterally approve an application where a criminal background check returns a misdemeanor conviction or convictions older than ten (10)
years from the date the application is submitted and the Presiding Officer or Designee has determined the individual is eligible for a license notwithstanding the misdemeanor conviction or convictions.

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 August 26, 2019.
TRD-201902896
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: September 15, 2019
Proposal publication date: July 26, 2019
For further information, please call: (512) 936-0661

37 TAC §651.218

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.218 with changes to the text as published in the July 26, 2019, issue of the Texas Register (44 TexReg 3790). The amendments clarify the Commission's guidelines for consideration of criminal convictions for license applicants pursuant to the 86th Legislature's changes in HB 1342. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program. The rule will be republished.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code §651.218.

§651.218. Preliminary Evaluation of License Eligibility Based on Criminal History.

(a) Request for Criminal History Evaluation Letter. A person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take the examination for an initial license; and

(2) has reason to believe he or she is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) The request must state the basis for the person's potential ineligibility.

(c) Authority to Investigate. The Commission has the same powers to investigate a request submitted under this section and the requestor's eligibility that the Commission has to investigate a person applying for a license.

(d) Determination of Eligibility; Letter. If the Commission determines that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination on each ground of potential ineligibility.

(e) Determination of Ineligibility; Letter. If the Commission determines that the requestor is ineligible for a license, the Commission shall issue a letter setting out each basis for potential ineligibility, including any factor considered under §651.217(b)(6) or §651.217(b)(7) of this subchapter that served as the basis for potential ineligibility, and the Commission's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Commission at the time the letter is issued, the Commission's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Commission must provide notice of determination of eligibility or ineligibility not later than the 90th day after the date the Commission receives the request.

(g) The Commission may charge a person requesting an evaluation under this section a $25 fee. Fees adopted by the Commission under this section must be in an amount sufficient to cover the costs of administering this section.

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 August 26, 2019.
TRD-201902895
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Effective date: September 15, 2019
Proposal publication date: July 26, 2019
For further information, please call: (512) 936-0661