Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

Title 1. Administration

Part 15. Texas Health and Human Services Commission

Chapter 351. Coordinated Planning and Delivery of Health and Human Services

Subchapter B. Advisory Committees

Division 1. Committees

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §351.819, concerning the Behavioral Health Integration Advisory Committee; §351.831, concerning the Employment First Task Force; and §351.835, concerning the Advisory Committee on Qualifications for Health Care Translators and Interpreters. HHSC proposes amendments to §351.805, concerning the State Medicaid Managed Care Advisory Committee; §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning the e-Health Advisory Committee; §351.827, concerning the Palliative Care Interdisciplinary Advisory Council; §351.833, concerning the STAR Kids Managed Care Advisory Committee; and §351.837, concerning the Texas Autism Council.

Background and Purpose

In 2015, the Texas Legislature removed 38 advisory committees from HHSC that were established by statute and, by adopting Texas Government Code §531.012, authorized the Executive Commissioner to establish advisory committees by rule. The Executive Commissioner's advisory committee rules were effective July 1, 2016. Several of the advisory committees are set to expire December 31, 2019, and HHSC intends to continue some of them. In addition, in Senate Bill 1731, the 85th Legislature removed the statutory expiration date for the Palliative Care Interdisciplinary Advisory Council, and in House Bill 4533, the 86th Legislature extended the STAR Kids Managed Care Advisory Committee through December 31, 2023. The only purposes of the proposal are to extend the terms of several advisory committees set to expire by the end of 2019, implement the aforementioned legislation, and repeal rules relating to advisory committees that have expired or are abolished.

Section-by-Section Summary

Proposed §351.805 extends the abolishment date of the State Medicaid Managed Care Advisory Committee to December 31, 2023.

Proposed §351.819 repeals the Behavioral Health Integration Advisory Committee.

Proposed §351.821 extends the abolishment date of the Value-Based Payment and Quality Improvement Advisory Committee to December 31, 2023.

Proposed §351.823 extends the abolishment date of the e-Health Advisory Committee to December 31, 2023.

Proposed §351.827 deletes the abolishment date of the Palliative Care Interdisciplinary Advisory Council and provides that the Council will continue as long as the state law establishing it remains in effect.

Proposed §351.831 repeals the Employment First Task Force.

Proposed §351.833 extends the abolishment date of the STAR Kids Managed Care Advisory Committee to December 31, 2023, consistent with Texas Government Code §533.00254(b)(1).

Proposed §351.835 repeals the Advisory Committee on Qualifications for Health Care Translators and Interpreters.

Proposed §351.837 extends the abolishment date of the Texas Autism Council to December 31, 2023.

Fiscal Note

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the rules are in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated General Revenue (GR) cost of $16,413 in fiscal year (FY) 2020, $16,413 in FY 2021, $16,413 in FY 2022, $16,413 in FY 2023, and $16,413 in FY 2024.

Enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of local government.

Government Growth Impact Statement

Trey Wood, Chief Financial Officer, has determined that during the first five years that the rules will be in effect:

1. the proposed rules will not create or eliminate a government program;

2. implementation of the proposed rules will not affect the number of HHSC employee positions;

3. implementation of the proposed rules will result in no assumed change in future legislative appropriations;

4. the proposed rules will not affect fees paid to HHSC;

5. the proposed rules will not create a new rule;
(6) the proposed rules will repeal existing rules;
(7) the proposed rules will not change the number of individuals subject to the rules; and
(8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the proposed rules. There are no entities other than HHSC required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Constance Allison, Deputy Executive Commissioner of Policy and Rules, has determined that for each of the first five years the rules are in effect, the public benefit will be accurate information available to stakeholders and the public regarding the duration and expiration of advisory committees making policy recommendations to HHSC.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rule amendments and appeals relate only to advisory committee expiration and duration. There is no cost of compliance, as there are no entities other than HHSC required to comply with the proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 14 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate “Comments on Proposed Rule 20R022 in the subject line.

1 TAC §§351.805, 351.821, 351.823, 351.827, 351.833, 351.837

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition.


§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established in accordance with Texas Government Code §531.012.

(b) Purpose.

(1) The SMMCAC advises HHSC on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Reports.

(1) By December 31st of each fiscal year, the SMMCAC must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;
(B) provides the members' attendance records;
(C) briefly describes actions taken by the committee;
(D) describes how the committee has accomplished its tasks;
(E) summarizes the status of any rules that the committee recommended to HHSC;
(F) describes anticipated activities the committee will undertake in the next fiscal year;
(G) recommends amendments to this section, as needed; and
(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31st of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. The SMMCAC is abolished, and this section expires, December 31, 2023 [2019].

(f) Membership. The SMMCAC consists of an odd number, but no more than 23, members.

(1) Each member is appointed by the Executive Commissioner.
(2) The SMMCAC consists of representatives of the following categories:

(A) hospitals;
(B) managed care organizations and participating health care providers;
(C) primary care providers and specialty care providers;
(D) state agencies;
(E) low-income Medicaid recipients or consumer advocates representing low-income recipients;
(F) Medicaid recipients with intellectual, developmental and/or physical disabilities, or consumer advocates representing those recipients;
(G) parents of children who are Medicaid recipients;
(H) rural providers;
(I) advocates for children with special health care needs;
(J) pediatric health care providers, including specialty providers;
(K) long-term services and supports providers, including nursing facility providers and direct service workers;
(L) obstetrical care providers;
(M) community-based organizations serving low-income children and their families;
(N) community-based organizations engaged in perinatal services and outreach;
(O) Medicaid recipients who are 65 years of age or older;
(P) Medicaid recipients or family members who are using mental health services;
(Q) non-physician mental health providers participating in the Medicaid managed care program; and
(R) entities with responsibilities for the delivery of long-term services and supports or other Medicaid service delivery, including:
(i) independent living centers;
(ii) area agencies on aging;
(iii) aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services; and
(iv) community mental health and intellectual disability centers.

(3) The membership will be racially and geographically diverse.

(4) Except as necessary to stagger terms, each member is appointed to serve a term of two years, with an appropriate number expiring each August 31. A member can serve no more than two terms.

(g) Officers.

(1) The SMMCAC selects a chair and vice chair from among its members.

(2) Each officer serves until his or her committee term expires.

§351.821. Value-Based Payment and Quality Improvement Advisory Committee.

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (Quality Committee) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Quality Committee provides a forum to promote public-private, multi-stakeholder collaboration in support of quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

(c) Tasks. The Quality Committee performs the following tasks:

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid/CHIP;

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid/CHIP value-based programs; and

(2) pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the Executive Commissioner or adopted into the work plan or bylaws of the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the Quality Committee files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members’ attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee’s activities and the source of funds used to support the committee’s activities.

(2) By December 1st of each even-numbered year, the committee submits a written report to the Executive Commissioner and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and
(B) provides recommendations consistent with the purposes of the Quality Committee.

c) Date of abolition. The Quality Committee is abolished, and this section expires, on December 31, 2023 [2019].

(f) Membership.

1. The Quality Committee is composed of 19 voting members appointed by the Executive Commissioner.

(A) HHSC solicits voting members from the following categories:

(i) Medicaid managed care organizations;

(ii) Regional Healthcare Partnerships;

(iii) hospitals;

(iv) physicians;

(v) nurses;

(vi) pharmacies;

(vii) providers of long-term services and supports;

(viii) academic systems; and

(ix) members from other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) The final composition of the committee is determined by the Executive Commissioner.

(C) The committee may include nonvoting, ex officio agency representatives as determined by the Executive Commissioner.

2. In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

3. Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each even-numbered year.

4. Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Quality Committee selects from its members a presiding officer and an assistant presiding officer.

1. The presiding officer serves until December 31st of each odd-numbered year. The assistant presiding officer serves until December 31st of each even-numbered year.

2. The presiding officer and the assistant presiding officer remain in their positions until the committee selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.823. e-Health Advisory Committee.

(a) Statutory authority. The e-Health Advisory Committee is established under Texas Government Code §531.012.

(b) Purpose. The committee advises the Executive Commissioner and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

(c) Tasks. The committee:

1. advises HHS agencies on the development, implementation, and long-range plans for health care information technology and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

2. advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

3. advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

4. makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC staff assigned to the committee; and

5. performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reports.

1. By February of each year, the committee files an annual written report with the Executive Commissioner covering the meetings and activities in the immediate preceding calendar year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

2. The committee also files an annual written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Date of abolition. The committee is abolished, and this section expires, on December 31, 2023 [2019].

(f) Membership. The committee is composed of no more than 24 members appointed by the Executive Commissioner.

1. The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services, including:

(A) at least two non-voting ex officio representatives from HHSC;

(B) at least one non-voting ex officio representative from the Texas Department of State Health Services;
(C) at least one representative from the Texas Medical Board;

(D) at least one representative from the Texas Board of Nursing;

(E) at least one representative from the Texas State Board of Pharmacy;

(F) at least one representative from the Statewide Health Coordinating Council;

(G) at least one representative of a managed care organization;

(H) at least one representative of the pharmaceutical industry;

(I) at least one representative of a health science center in Texas;

(J) at least one expert on telemedicine;

(K) at least one expert on home telemonitoring services;

(L) at least one representative of consumers of health services provided through telemedicine;

(M) at least one Medicaid provider or child health plan program provider;

(N) at least one representative from the Texas Health Services Authority established under Chapter 182, Texas Health and Safety Code;

(O) at least one representative of a local or regional health information exchange; and

(P) at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(2) When appointing members, the Executive Commissioner will consider the cultural, ethnic, and geographic diversity of Texas, including representation from at least 6 of the 11 Texas Health Service Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007 (www.dshs.state.tx.us/regions/state.shtm).

(3) Except as may be necessary to stagger terms, the term of office of each member is two years. Individuals will normally serve one term. An individual may apply and be appointed for a second two-year term, which may be served consecutively or nonconsecutively.

(A) Members are appointed for staggered terms so that the terms of half of the members expire on December 31st of each year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(C) This paragraph does not apply to ex officio members, who serve at the pleasure of the Executive Commissioner.

(g) Officers. The committee selects from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer serves until July 1st of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year.

(2) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.827. Palliative Care Interdisciplinary Advisory Council.

(a) Statutory authority. The Palliative Care Interdisciplinary Advisory Council (Palliative Care Council or Council) is established in accordance with Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S., §2 (H.B. 1874).

(b) Purpose. The Palliative Care Council assesses the availability of patient-centered and family-focused, interdisciplinary team-based palliative care in Texas for patients and families facing serious illness. The Council works to ensure that relevant, comprehensive, and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. This includes information and education about complex symptom management, care planning, and coordination needed to address the physical, emotional, social, and spiritual suffering associated with serious illness.

(c) Tasks. The Palliative Care Council performs the following tasks:

(1) consults with and advises HHSC on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Texas Health and Safety Code §118.011;

(2) studies and makes recommendations to remove barriers to appropriate palliative care services for patients and families facing serious illness in Texas of any age and at any stage of illness; and

(3) pursues other deliverables consistent with its purpose as requested by the Executive Commissioner or adopted into the work plan or bylaws of the council.

(d) Reports.

(1) By December of each fiscal year, the Palliative Care Council files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members’ attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee’s activities and the source of funds used to support the committee’s activities.

(2) By October 1st of each even-numbered year, the Council submits a written report to the Executive Commissioner and the standing committees of the Texas senate and house with primary jurisdiction over health matters. The report:

(A) assesses the availability of palliative care in Texas for patients in the early stages of serious disease;

(B) analyzes barriers to greater access to palliative care;

(C) analyzes policies, practices, and protocols in Texas concerning patients’ rights related to palliative care, including:
whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician or practitioner;

(ii) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(iii) the practices and protocols on informed consent and disclosure requirements for palliative care services; and

(D) provides recommendations consistent with the purposes of the Palliative Care Council.

(e) Date of abolition. The Palliative Care Council is subject to Chapter 325, Texas Government Code. Unless continued in existence as provided by that chapter, the Palliative Care Council is required by statute and will continue as long as the state law that requires it remains in effect [as abolished and this section expires September 1, 2019].

(f) Membership.

(1) The Palliative Care Council is composed of at least 15 voting members appointed by the Executive Commissioner.

(A) The Palliative Care Council must include:

(i) at least five physician members, including:

(I) two who are board certified in hospice and palliative care; and

(II) one who is board certified in pain management;

(ii) three palliative care practitioner members, including:

(I) two advanced practice registered nurses who are board-certified in hospice and palliative care; and

(II) one physician assistant who has experience providing palliative care;

(iii) four health care professional members, including:

(I) a nurse;

(II) a social worker;

(III) a pharmacist; and

(IV) a spiritual-care professional; and

(iv) at least three members:

(I) with experience as an advocate for patients and the patients' family caregivers;

(II) who are independent of a hospital or other health care facility; and

(III) at least one of whom represents an established patient advocacy organization.

(B) Health care professional members listed in subparagraph (A)(iii) of this paragraph must meet one or more of the following qualifications:

(i) experience providing palliative care to pediatric, youth, or adult populations;

(ii) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(iii) expertise in interdisciplinary palliative care.

(C) The committee may include nonvoting agency, ex-officio representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each odd-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Palliative Care Council selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the Palliative Care Council selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.833. STAR Kids Managed Care Advisory Committee.

(a) Statutory authority. The STAR Kids Managed Care Advisory Committee (STAR Kids Advisory Committee) is established under Texas Government Code §531.012.

(b) Purpose. The STAR Kids Advisory Committee advises HHSC on the establishment and implementation of, and recommends improvements to, the STAR Kids managed care program.

(c) Tasks. The STAR Kids Advisory Committee makes recommendations consistent with its purpose to HHSC through regularly scheduled meetings and staff assigned to the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the STAR Kids Advisory Committee must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members’ attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31 of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. On December 31, 2023 [2019], the advisory committee is abolished and this section expires.
(f) Membership.

(1) The Executive Commissioner appoints the members of the STAR Kids Advisory Committee.

(2) The STAR Kids Advisory Committee may consist of:

(A) representatives from families whose children will receive private duty nursing, are IDD waiver recipients, or receive mental and behavioral health services under the program;
(B) medical care providers;
(C) providers of home and community-based services, including at least one private duty nursing provider, one durable medical equipment provider, and one pediatric therapy provider;
(D) managed care organizations;
(E) advocates for children with special health care needs; and
(F) other stakeholders as the executive commissioner determines appropriate.

(3) The STAR Kids Advisory Committee may have no more than 24 members.

(4) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(g) Presiding officer.

(1) The committee selects from its members a presiding officer, and an assistant presiding officer at the discretion of the committee.

(2) The presiding officer serves until August 31st of each even-numbered year. The assistant presiding officer, if applicable, serves until August 31st of each odd-numbered year.

(3) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.


(a) Statutory authority. The Texas Autism Council is established in accordance with HHSC’s general authority to establish committees under Texas Government Code §531.012(a).

(b) Purpose. The Texas Autism Council advises and makes recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) Tasks. The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and
(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) Reporting requirements. The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) Abolition. The Texas Autism Council is abolished, and this section expires, on December 31, 2023.

(f) Membership.

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of a person with autism spectrum disorder.
(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;
(II) Texas Department of Family and Protective Services;
(III) Texas Department of State Health Services;
(IV) Texas Health and Human Services Commission;
(V) Texas Workforce Commission; and
(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or
(B) vote.

(g) Presiding officer.

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904187
Karen Ray
Chief Counsel
Texas Health and Human Services Commission

Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 707-6101

1 TAC §§351.819, 351.831, 351.835

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rules.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5).**

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed sections.

**GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.**

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Texas First time Homebuyer Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule’s applicability.

8. The repeal will not negatively nor positively affect this state’s economy.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§27.1. Purpose.

§27.2. Definitions.

§27.3. Procedures for Submitting Requests or Inviting Proposals.

§27.4. Restrictions on Residents Financed and Applicant.

§27.5. Occupancy and Use Requirements.
§27.6. Application Procedure and Requirements for Commitments by Mortgage Lenders.

§27.7. Criteria for Approving Participating Mortgage Lenders.

§27.8. Resale of the Residence.

§27.9. Conflicts with Bond Indentures and Applicable Law.

§27.10. Waiver.

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

Filed with the Office of the Secretary of State on November 8, 2019.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 936-9268

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, §§27.1 - 27.9. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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


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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Texas First Time Homebuyer Program.

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

3. The new rule changes do not require additional future legislative appropriations.

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

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

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

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for
each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOVT' CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, December 23, 2019.

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

Except as described herein the proposed new sections affect no other code, article, or statute.

§27.1. Purpose.

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time homebuyers, and to provide to qualifying homebuyers down payment and closing cost assistance. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§27.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

1. Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

2. Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

3. Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

4. Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(c) of the Code.

5. Code--The Internal Revenue Code of 1986, as amended from time to time.

6. Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

7. Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

8. First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each applicant must separately meet this three year requirement.

9. Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

10. Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

11. Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

12. Program--The Texas First Time Homebuyer Program.

13. Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

14. Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a first time homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a first time homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds and is utilizing the veteran exemption set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

15. Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is
intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(18) Targeted area exemption to first time homebuyer requirement--Borrower's purchasing homes in targeted areas financed through the program are exempt from the requirement to be a first time homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(19) United States Department of Veterans Affairs--Also known as VA.

§27.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (d) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

§27.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the residence in a trade or business (including childcare services) on a regular basis for compensation. If the residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§27.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.


(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

§27.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be
issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§27.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department’s mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§27.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904183
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 936-9268

CHAPTER 28. TAXABLE MORTGAGE PROGRAM

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, §§28.1 - 28.9. The purpose of the proposed repeal is to eliminate outdated rules while adopting new updated rules under separate action.

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

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Taxable Mortgage Program.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Taxable Mortgage Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule’s applicability.

8. The repeal will not negatively nor positively affect this state’s economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal in is effect, the public benefit anticipated as a result of the repealed sections would be an elimination of outdated rules while adopting new updated rules under separate action. There will be no economic costs to individuals required to comply with the repealed sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§28.1. Purpose.
§28.2. Definitions.

§28.3. Procedures for Submitting Requests or Inviting Proposals.

§28.4. Restrictions on Residences Financed and Applicant.

§28.5. Occupancy and Use Requirements.

§28.6. Application Procedure and Requirements for Commitments by Mortgage Lenders.


§28.9. Waiver.

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

Filed with the Office of the Secretary of State on November 8, 2019.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 936-9268

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 28, Taxable Mortgage Program Rule, §§28.1 - 28.9. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrowers receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov’t Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, no costs are associated with this action that would have prompted a need to be offset.

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Taxable Mortgage Program.

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

3. The new rule changes do not require additional future legislative appropriations.

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

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

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

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state’s economy.

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

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

2. This rule relates to the general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov’t Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant...
regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule have already been in practice.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, December 23, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§28.1. Purpose.
(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing Mortgage Loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§28.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

1. Applicable Median Family Income—The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

2. Applicant—A person or persons applying for financing of a Mortgage Loan under the Program.

3. Areas of Chronic Economic Distress—Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

4. Average Area Purchase Price—With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(c) of the Code.


6. Department Designated Areas of Special Need—Geographic areas designated by the Department from time to time as areas of special need.

7. Federal Housing Administration—A division of the U.S. Department of Housing and Urban Development, also known as FHA.

8. Master Mortgage Origination Agreement—The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

9. Mortgage Lender—The entity, as defined in §2306.004 of the Tex. Gov't Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

10. Participation Packet—The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

11. Program—The Taxable Mortgage Program.

12. Purchase Price Limit—The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90 percent of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

13. Regulations—The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

14. Residence—A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. Has the same meaning as Home in Chapter 2306 of the Tex. Gov't Code.

15. Rural Housing Service—A division of the United States Department of Agriculture, also known as RHS.

16. Targeted Area—A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

17. United States Department of Veterans Affairs—Also known as VA.

§28.3. Restrictions on Residences Financed and Applicant.
(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.
(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

§28.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or his designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§28.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

1. an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

2. all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.


(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

1. FHA;

2. RHS;

3. VA; or

4. be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must

1. agree to originate Mortgage Loans and assign those loans and related Mortgage servicing to the Department's master servicer;

2. originate, process, underwrite, close and fund originated loans; and

3. be an approved Mortgage Lender with the Program's master servicer.

§28.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.


All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§28.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8, if the Board finds that waiver is appropriate to fulfill the purposes or policies of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER DD. TITLE IX TRAINING ADVISORY COMMITTEE

19 TAC §§1.9531 - 1.9536

The Texas Higher Education Coordinating Board proposes new Chapter 1, Subchapter DD, §§1.9531 - 1.9536, concerning the Title IX Training Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to make recommendations to the Coordinating Board regarding rules for adoption under §51.295 of the Texas Education Code; and develop recommended training for responsible and confidential employees designated under §51.290; for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions. The newly added rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new rules. There would be minimal costs to public institutions of higher education to support the expenses of committee members who may travel to the Coordinating Board in Austin for meetings.

Dr. Silverman also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be improvements in procedures at public institutions of higher education for addressing incidents of sexual misconduct. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;
(2) implementation of the rules will not require the creation or elimination of employee positions;
(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid to the agency;
(5) the rules will create new rules;
(6) the rules will not limit an existing rule;
(7) the rules will not change the number of individuals subject to the rule; and
(8) the rules will positively affect the state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new rules are proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of advisory committees and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new rules affect the implementation of Texas Education Code, Chapter 51.

§1.9531. Authority and Purpose of the Title IX Training Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 51, §51.294 and §51.260.

(b) The Title IX Training Advisory Committee is created to provide the Board with recommendation(s) regarding the training for responsible and confidential employees and student advocates designated under TEC Section 51.290, Title IX Coordinators and other institutional employees who may receive confidential disclosures from students under Section 51.290.

§1.9532. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Recommended Training--Training developed by the advisory committee for responsible and confidential employees and student advocates designated under Section 51.290, for employees in the course and scope of their employment, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

§1.9533. Committee Membership and Officers.

(a) The advisory committee consists of nine members appointed by the commissioner of higher education. Eight members must be chief executive officers of postsecondary educational institutions or representatives designated by those officers; and one member must be a representative of an advocacy organization for victims of sexual assault or family violence.

(b) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(c) Members shall serve staggered 3-year terms and may serve multiple terms.

§1.9534. Duration.
The committee shall be abolished no later than November 1, 2023, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.
§1.9535. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (c) of this section. Thereafter the committee shall meet on an annual basis, as required by TEC Section 51.294. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) Tasks assigned the committee include:

(1) make recommendations to the coordinating board regarding rules for adoption under Section 51.295; and

(2) develop recommended training for responsible and confidential employees and student advocates designated under TEC Section 51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(c) Not later than December 1, 2019, the advisory committee shall develop the recommended training under subsection (b) of this section.

(d) The advisory committee shall annually review and, if necessary, update the training recommended under subsection (b)(2) of this section.

§1.9536. Report to the Board: Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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SUBCHAPTER EE. STUDY AND REPORT ON CORE CURRICULUM ADVISORY COMMITTEE

19 TAC §§1.9541 - 1.9546

The Texas Higher Education Coordinating Board proposes new Chapter 1, Subchapter EE, §§1.9541 - 1.9546, concerning the Study and Report on Core Curriculum Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to provide the Board with recommendation(s) regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §61.822 in supporting more efficient undergraduate transfer between institutions of higher education. The newly added rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections. There would be minimal costs to public institutions of higher education to support the expenses of committee members who may travel to the Coordinating Board in Austin for meetings.

Dr. Silverman has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improvements in core curriculum course transfer at public institutions of higher education for students. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will positively affect the state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under the Texas Education Code, §61.8221, which provides the Coordinating Board with the authority to establish an advisory committee to assist the Board in completing the board's duties under this section and provide the Board with subject matter expertise and analysis and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.9541. Authority and Purpose of the Study and Report on Core Curriculum Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 61, §61.8221.

(b) The Study and Report on Core Curriculum Advisory Committee is created to provide the Board with recommendation(s)
§1.9542 Definitions. The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board—The Texas Higher Education Coordinating Board.

(2) Core Curriculum or Texas Core Curriculum—the curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to institutions of higher education that offer academic undergraduate degree programs.

§1.9543 Committee Membership and Officers.
(a) The advisory committee consists of up to 24 of the following members appointed by the board in equal numbers:

(1) representatives of public junior colleges designated by the applicable college to represent the college on the advisory committee; and

(2) representatives of general academic teaching institutions designated by the applicable institution to represent the institution on the advisory committee.

(b) A majority of members appointed to the advisory committee under subsection (a)(2) of this section must be representatives of a general academic teaching institution at which at least 25 percent of students enrolled at the institution for the 2018 fall semester were classified as transfer students.

(c) In appointing members to the advisory committee under subsection (b) of this section, the board shall, to the greatest extent practicable, ensure that the membership of the advisory committee is balanced with respect to:

(1) institutional representation, including:

(A) the regions of the state;

(B) the mission type of the general academic teaching institution or public junior college;

(C) university system affiliation, as applicable;

(D) student enrollment; and

(E) institutional groupings under the board’s higher education accountability system;

(2) representation of faculty and administrators at general academic teaching institutions or public junior colleges;

(3) representation of academic disciplines; and

(4) any other factors the board determines relevant.

(d) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer’s stead as needed.

(e) Members shall serve single terms lasting until the abolishment of the committee no later than September 1, 2021.

§1.9544 Duration. The committee shall be abolished no later than September 1, 2021, in accordance with Texas Education Code, Chapter 61, §61.8221.

§1.9545 Meetings and Tasks of the Committee.
(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (d) of this section. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) The advisory committee shall study and make recommendations to the board regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §1.822 in supporting more efficient undergraduate transfer between institutions of higher education. The study and recommendations must include an analysis of:

(1) the efficacy of dividing the recommended core curriculum for each major into a general academic core curriculum and an academic discipline core curriculum and, if determined to be efficacious, the recommended number of semester credit hours for each component of the recommended core curriculum for each major;

(2) methods to ensure that courses completed in the general academic core curriculum and academic discipline core curriculum transfer between institutions of higher education for course credit applied toward a student’s major at the receiving institution; and

(3) the potential inclusion of courses in the field of study curricula adopted by the board under §61.823 in the core curriculum adopted by the board under §61.822.

(c) Each quarter ending before November 1, 2020, the advisory committee shall submit to the chairs of the standing legislative committees with primary jurisdiction over higher education and to the Board a report on the advisory committee’s progress on the study and recommendations required under subsection (b) of this section.

(d) Not later than July 1, 2020, the advisory committee shall submit to the Board a report that includes the results of the study conducted under subsection (b) of this section and any recommendations for legislative or other action.

§1.9546 Report to the Board; Evaluation of Committee Costs and Effectiveness. The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee’s work, usefulness, and the costs related to the committee’s existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER BB. NURSING SHORTAGE REDUCTION PROGRAM RIDER 28 STUDY WORK GROUP

19 TAC §§22.751 - 22.757

The Texas Higher Education Coordinating Board proposes Subchapter BB, §§22.751 - 22.757 of Board rules concerning the establishment of the Nursing Shortage Reduction Program Rider 28 Study Work Group. The proposed rules establish the Nursing Shortage Reduction Program (NSRP) Rider 28 Study Work Group. The work group will be charged with studying the effectiveness of the NSRP in addressing the shortage of professional nurses in the state, studying the structure and efficiency of the program, and studying other funding strategies to address the nursing shortage. The work group members will include the following: an equitable representation of institutions eligible to participate in the program, the Texas Nursing Association, the Texas Board of Nursing, The Department of State Health Services Center for Nursing Workforce Studies, and other stakeholders. The work group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff. Each higher education institution in Texas that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group. Tasks assigned to the work group will include advising the Board of the THECB, providing THECB staff with feedback about processes and procedures, and addressing any other issues related to the NSRP Rider 28 Study as determined by the Board of the THECB. The rules were adopted by the Board on an emergency basis at the October 2019 meeting pursuant to Section 2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than a 30 days' notice.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, has determined there will be no fiscal implications for state or local governments as a result of adding the new sections. There would be no impact on small businesses or rural communities as described in Texas Government Code, Chapter 2006.002; therefore, an Economic Impact analysis is not required.

Dr. Eklund has also determined the public benefits anticipated as a result of administering the new sections will be to enable a work group, as required by the general appropriations act, to study the effectiveness of the NSRP in addressing the shortage of professional nurses in the state. There would be no impact on public institutions of higher education and local employment.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;
(2) implementation of the rules will not require the creation or elimination of employee positions;
(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid to the agency;
(5) the rules will not create a new rule;
(6) the rules will not limit an existing rule;
(7) the rules will not change the number of individuals subject to the rule; and
(8) the rules will positively affect the state's economy.

Comments on the proposed amendments may be submitted to Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at Julie.Eklund@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendments are proposed to create a work group to study the effectiveness of the Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state, as required by General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature. There are no statutes, articles, or codes affected by the proposed action.

§22.751. Authority and Specific Purpose of the Nursing Shortage Reduction Program Rider 28 Study Work Group.

(a) Authority. Authority for this subchapter is provided in the General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature.

(b) Purpose. The Nursing Shortage Reduction Program Rider 28 Study Work Group is created to provide the Commissioner and the Board with guidance regarding the Nursing Shortage Reduction Program.

§22.752. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Nursing Shortage Reduction Program--The program authorized in the General Appropriations Act, HB 1, Article III-56, Section 28, 86th Texas Legislature.

§22.753 Work Group Membership.

(a) The work group members will include the following: an equitable representation of institutions eligible to participate in the Nursing Shortage Reduction Program, the Texas Nursing Association, the Texas Board of Nursing, the Department of State Health Services Center for Nursing Workforce Studies, and industry.

(b) The work group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff.

(c) Each higher education institution that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group.

(d) Board staff will recommend for Board appointment individuals who are nominated.

(e) The number of work group members shall not exceed twenty-four (24).

(f) Members shall serve until the work group is abolished.

§22.754. Duration.

The work group shall be abolished no later than November 2, 2020, in accordance with Texas Government Code, Chapter 2110.
§22.755. Meetings.
The Work Group shall meet as necessary. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Work Group.

§22.756. Tasks Assigned to the Work Group.
Tasks assigned to the Work Group include:

1. Study the effectiveness of the Professional Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state;

2. Study the structure and efficiency of the program;

3. Study other funding strategies to address the nursing shortage; and

4. Any other issues related to the Nursing Shortage Reduction Program as determined by the Board.

§22.757. Report to the Board; Evaluation of Work Group Costs and Effectiveness.
The Work Group shall report recommendations to the Board. The Work Group shall also report Work Group activities to the Board to allow the Board to properly evaluate the work of the Work Group, usefulness, and the costs related to the Work Group existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING TRANSITION ASSISTANCE FOR HIGHLY MOBILE STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE

19 TAC §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, 89.1617

The Texas Education Agency (TEA) proposes new §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, and 89.1617, concerning transition assistance for highly mobile students who are homeless or in substitute care. The proposed new rules would assist with the transition of students who are homeless or in substitute care from one school to another and provide local education agencies (LEAs) with guidance on the requirements of Texas Education Code (TEC), §25.007.

BACKGROUND INFORMATION AND JUSTIFICATION: Senate Bill (SB) 1220, 85th Texas Legislature, 2017, amended TEC, §25.007, relating to transition assistance for students who are homeless or in substitute care. SB 1220 addressed the continuity of education for this population of students, including placement in comparable courses or education programs and provision of comparable services during the referral process, and authorized the commissioner to establish rules to implement TEC, §25.007.

Proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter FF, Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care, would address school district and open-enrollment charter school responsibilities, as follows.

Proposed new §89.1601, Definitions, would provide clarity by defining terms having meanings specific to proposed new Chapter 89, Subchapter FF.

Proposed new §89.1603, Transfer of Student Records and Transcripts, would address responsibilities for LEAs to request, send, and receive student records and transcripts as required by TEC, §25.002(a-1), to ensure a seamless enrollment and transition.

Proposed new §89.1605, Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student, would establish systems that LEAs must develop to ease the transition during the first two weeks of enrollment at a new school. The proposed new rule would address welcome packets, introductions, and a process to ensure that eligible students receive nutrition benefits. It would also address the necessary elements for the required enrollment conference.

Proposed new §89.1607, Award of Credit, would address the creation and examination of existing local policies to assist LEAs with the award of credits, including credit by examination, credit recovery plans, course transition plans, and personal graduation plans.

Proposed new §89.1609, Placement in Educational Programs and Courses, would address LEA responsibilities relating to course and educational program placement in order to ensure continuity for students.

Proposed new §89.1611, Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care, would set forth LEA responsibilities relating to access and participation in educational and extracurricular programs, including tutoring programs, Communities in Schools or similar programs, and University Interscholastic League (UIL) participation to mitigate transition barriers to participation.

Proposed new §89.1613, Promotion of Postsecondary Information, would address LEA responsibilities to promote postsecondary access and to ensure students are progressing toward graduation and are linked with appropriate higher education financial resources and supports in order to implement TEC, §28.0212 and §54.366, and 42 United States Code, §11432(g)(6)(A)(x).

Proposed new §89.1615, Provision of Special Education Services, would address LEA responsibilities to provide special education services and accept referrals made by previous school...
districts or open-enrollment charter schools for special education evaluation to ensure the appropriate placement of services for students.

Proposed new §89.1617, Notice to Student’s Educational Decision-Maker and Caseworker, would address the requirement in TEC, §25.007, that LEAs provide notice to the student’s educational decision-maker or caseworker of information that significantly impacts the education of the student. The proposed new rule would include the requirement passed by House Bill 1709, 86th Texas Legislature, 2019, requiring school districts and open-enrollment charter schools to provide notice to the student’s educational decision-maker and caseworker regarding the appointment of a surrogate parent for the child under TEC, §29.0151.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to assist with the transition of students who are homeless or in substitute care. The proposal would lay out the expectations for school districts and open-enrollment charter schools on what is needed to fulfill the requirements of TEC, §25.007.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be mitigation of challenges and integration of solutions at school districts and open-enrollment charter schools for effectively serving mobile students who are homeless or in substitute care. The proposal would require actions to reduce barriers related to school transitions, thus supporting learning and future educational achievement for students as they transition between Texas public schools due to their mobility. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. In such an instance, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. Section 89.1611 would require that appropriate district or charter school staff complete and submit a UIL waiver of residence application form for students who are homeless or in substitute care plan and to participate in varsity athletics or other UIL-sponsored activities.

PUBLIC COMMENTS: The public comment period on the proposal begins November 22, 2019, and ends December 23, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on November 22, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §25.002(a-1), which requires school districts and open-enrollment charter schools to transfer student records to the district to which the request is made not later than the 10th working day after the date a request for the information is received by the district; and TEC, §25.007(c), which authorizes the commissioner to establish rules to facilitate the transition between schools of children who are homeless or in substitute care.

CROSS REFERENCE TO STATUTE. Texas Education Code, §25.002(a-1) and §25.007(c).

§89.1601. Definitions. The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise.

1. Homeless—This term has the meaning assigned to the term "homeless children and youths" under 42 United States Code (USC), §11432.

2. Homeless liason—A person designated by a school district or an open-enrollment charter school pursuant to the McKinney-ento Homeless Assistance Act (42 USC, §11432(g)(1)(J)(ii)), to ensure homeless children and youth are identified and enrolled, with a full and equal opportunity to succeed, in schools.

3. Substitute care—The placement of a child who is in the conservatorship of the Department of Family and Protective Services (DFPS) in care outside the child’s home. The term includes foster care, institutional care, pre-adoptive homes, placement with a relative of the child, or commitment to the Texas Juvenile Justice Department under Texas Family Code, §263.001(a)(4).
(4) Foster care liaison--The individual each local educational agency appoints to act as a liaison to facilitate enrollment or transfer of a child who is in conservatorship of the state, pursuant to Texas Education Code, §33.904.

(5) Foster care--Twenty-four-hour substitute care for children placed away from their parents or guardians and for whom DFPS has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoption homes.

(6) Educational decision-maker--A person designated by DFPS to make education decisions on behalf of youth in substitute care.

(7) Enrollment conference--A student-centered meeting for a newly enrolled student to identify academic and extracurricular interests; introduce school processes and opportunities for engagement; develop course and instructional strategies; review credits and assessment information; determine social-emotional support; and communicate confidential information that may impact a student's success, if needed.

(8) Records--Documents in printed or electronic form that include, but are not limited to, student transcripts; individual course grades; academic achievement records; course credits, whether full or partial; individualized education program referrals; intervention data; immunizations; state assessment scores; student attendance data; disciplinary reports; graduation endorsements; special education/Section 504 committee records; performance acknowledgments; and personal graduation plans.

§89.1603. Transfer of Student Records and Transcripts.

(a) Each school district and open-enrollment charter school must ensure that copies of student records are made available to schools to which students who are homeless or in substitute care transfer.

(b) Each school district and open-enrollment charter school is required to transfer student records within 10 working days of receipt of a request from a district or charter school to which a student who is homeless or in substitute care enrolls, as required by Texas Education Code (TEC), §25.002(a-1). The discretionary authority under TEC, §31.104(d), to withhold records of a student if the student has not returned or paid for instructional materials or technological equipment does not exempt a district or charter school from the mandatory provision in TEC, §25.002, to send records to another public school in which the student enrolls.

(c) Proof of enrollment in a different school district or open-enrollment charter school permits retroactive withdrawal to the date a student enrolled in the new school. The date of enrollment in the new district or charter school is considered the date of withdrawal from the previous district or charter school.

(d) Student records must be requested, sent, and received using the Texas Records Exchange (TREx) system.

(e) If a school district or an open-enrollment charter school fails to receive the required information within 10 working days, the requesting district or charter school shall report the noncompliant district or charter school to the division responsible for general inquiries at the Texas Education Agency.

§89.1605. Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student.

(a) Each school district and open-enrollment charter school shall develop systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school. These systems shall include the following:

(1) welcome packets containing information regarding enrollment in extracurricular activities, club activities, information on fee waivers, tutoring opportunities, the student code of conduct, and contact information for pertinent school staff such as counselors, nurses, social workers, the foster care liaison, the homeless liaison, the principal and any assistant principals, and related contacts;

(2) introductions for new students that maintain student privacy and confidentiality to the school environment and school processes by school district or charter school faculty, campus-based student leaders, or ambassadors; and

(3) mechanisms to ensure that a process is in place for all students who qualify to receive nutrition benefits upon enrollment, as all students who are homeless or in substitute care are eligible for United States Department of Agriculture Child Nutrition Programs. The process must expedite communication with the district or charter school nutrition coordinator to ensure that eligible students are not charged in error or experience delays in receiving these benefits.

(b) A school district or an open-enrollment charter school shall convene an enrollment conference with the student within the first two weeks of enrollment or within the first two weeks after the student is identified as homeless or in substitute care.

(1) The convening of the enrollment conference shall not delay or impede the enrollment of the student.

(2) The enrollment conference shall address the student's credit recovery, credit completion, attendance plans and interventions, interests and strengths, discipline or behavior concerns, previous successes, college readiness, and social and emotional supports as well as district policies relating to transfers and withdrawals and communication preferences with parents or guardians. The enrollment conference may be comprised of:

(A) school administrators;
(B) homeless or foster care liaisons;
(C) a social worker;
(D) teachers;
(E) counselors;
(F) dropout prevention specialists;
(G) attendance/truancy officers;
(H) the foster placement caregiver or case manager;
(I) the Texas Department of Family and Protective Services (DFPS) designated educational decision-maker;
(J) the DFPS caseworker, Court Appointed Special Advocates (CASA) volunteer, or other volunteer, as applicable; and
(K) a parent and/or guardian.

(3) The enrollment conference must continue to convene on a regular schedule (at least every semester or, if a school operates under a quarterly or trimester system, every quarter or trimester) to assess and evaluate the needs, academic progress, interventions, and support services of students who are homeless or in substitute care.

(c) A district or charter school must provide professional development and training for pertinent staff members (such as principals, registrars, counselors, designated liaisons, nutrition coordinators, transportation specialists, etc.) concerning communication, processes, and procedures for facilitating successful school transitions for students who are homeless or in substitute care.
(d) For each district or charter school, the Texas Records Exchange (TREx), the Personal Identification Database (PID), or the Person Enrollment Tracking (PET) application must be used to expedite coordination and communication between the sending and receiving schools.

§89.1607. Award of Credit.

(a) Each school district and open-enrollment charter school must adopt a local policy to assist with awarding to a student who is homeless or in substitute care credit for a course that was earned prior to the student enrolling in or transferring to the district or charter school, as required by §74.26 of this title (relating to Award of Credit).

(b) Each school district and open-enrollment charter school must examine how credit is awarded based on satisfactorily meeting all state and local requirements for a course upon enrollment, as required by §74.26 of this title.

(c) Each school district and open-enrollment charter school must provide opportunities for a student who is homeless or in substitute care who enrolls in the district or charter school after the start of the school year to be administered credit by examination at any point during the school year, as required by §74.24 of this title (relating to Credit by Examination).

(d) Each school district and open-enrollment charter school must award credit proportionately to a student who is homeless or in substitute care who successfully completes only half of a course, as required by §74.26(e) of this title.

(e) Each school district and open-enrollment charter school must:

1. develop a credit recovery plan for students who were denied credits outside the district or charter school;
2. create a course transition plan for students who have been denied credit;
3. develop and administer a personal graduation plan for each student in junior high or middle school, as required by Texas Education Code (TEC), §28.0212;
4. ensure that school staff engage with the student, parent, or guardian, as applicable, to develop a credit recovery plan upon enrollment if the student has a credit deficit that would impede on-time promotion or graduation; and
5. comply with TEC, §28.025(i), concerning the award of diplomas for students who are homeless or in substitute care who are in Grade 11 or 12.

§89.1609. Placement in Educational Programs and Courses.

(a) When a student who is homeless or in substitute care transfers before or during the school year, the receiving school district or open-enrollment charter school shall initially place the student in educational programs and courses based on the student’s prior enrollment in and current educational assessments from the sending school.

1. Educational programs include, but are not limited to, gifted and talented program services, bilingual or special language services for English learners, career and technical education, and early college high school.
2. Course placement includes, but is not limited to, honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathway courses.

(b) Each school district and open-enrollment charter school must ensure that a student who is homeless or in substitute care has the ability to earn the same endorsement categories, if applicable. If only one endorsement is offered, it must be multidisciplinary studies.

(c) To the extent possible, each school district and open-enrollment charter school shall ensure the continuation of a student’s educational and course programs from the previous district or charter school and promote placement in academically challenging and career preparation courses.

§89.1611. Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care.

(a) Each school district and open-enrollment charter school shall provide opportunities for students who are homeless or in substitute care to participate in summer programs, electronic courses provided through the Texas Virtual School Network, and after-school tutoring programs at nominal or no cost.

(b) Each school district and open-enrollment charter school must encourage participation in tutoring programs and Communities in Schools or similar programs, when available, that provide tutoring, mentoring, after-school, and summer programs.

(c) Appropriate school district or open-enrollment charter school staff must complete and submit a University Interscholastic League (UIL) waiver of residence application form for a student who is homeless or in substitute care and plans to participate in varsity athletics or other UIL-sponsored activities.

1. Districts and charter schools must comply with Texas Education Code, §25.001(f), and not prohibit a student in substitute care from participating in any activity sponsored by the school district.
2. Students in foster care remaining in their school of origin but residing outside of the school district of attendance shall be afforded a waiver, as allowed under UIL Constitution and Contest Rules Section 442: Residence in School District and Attendance Zone.

§89.1613. Promotion of Postsecondary Information.

(a) School district and open-enrollment charter school counselors or other designated staff shall work with district homeless and foster care liaisons to ensure that all students who are identified as homeless or in substitute care are on track to graduate with endorsements, if applicable, and have postsecondary plans identified in their personal graduation plans, pursuant to Texas Education Code (TEC), §28.0212.

(b) School district and open-enrollment charter school counselors or other designated staff must inform unaccompanied homeless youths of their rights and status as independent students for the purpose of applying for financial aid for higher education and provide verification of such status for the Free Application for Federal Student Aid (FASFA), pursuant to 42 United States Code, §11342(g)(6)(A)(x).

(c) Each school district and open-enrollment charter school must ensure that a student in substitute care who is enrolled in Grade 11 or 12 in that district or charter school is provided information regarding tuition and fee exemptions under TEC, §54.366, for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit.

§89.1615. Provision of Special Education Services.

(a) When a student who is homeless or in substitute care transfers into a school district or an open-enrollment charter school after being referred by a previous district or charter school for a special education evaluation, the receiving district or charter school must accept the referral and ensure that it meets timelines established in §89.1011 of this title (relating to Full Individual and Initial Evaluation).
§89.1617. Notice to Student’s Educational Decision-Maker and Caseworker.

Each school district and open-enrollment charter school must comply with Texas Education Code (TEC), §25.007(b)(10), and provide notice in writing to the educational decision-maker and caseworker of a student who is homeless or in substitute care regarding events that may significantly impact the education of the student.

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

Filed with the Office of the Secretary of State on November 8, 2019.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER’S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor’s note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is “cumbersome, expensive, or otherwise inexpedient,” the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 22, 2019, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning charter school performance frameworks. The proposed amendment would adopt in rule the 2019 Charter School Performance Frameworks (CSPF) Manual, which would be updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

BACKGROUND INFORMATION AND JUSTIFICATION: §100.1010 was adopted to be effective on September 18, 2014, and was last amended to be effective July 22, 2019. The rule is issued under TEC, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The proposed amendment would replace the 2018 CSPF Manual with the 2019 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2019 version of the manual includes the following significant changes from the 2018 version.

The weight of component frameworks for a school’s overall CSPF score would be altered to 70% academic indicators, 20% financial indicators, and 10% operational indicators. The alteration is intended to further emphasize the importance of academic achievement in establishing high-quality learning opportunities for Texas students.

The calculation method of a school’s performance on its academic framework indicators would be updated to be based 80% on a school’s overall academic accountability (A-F) score, 10% on achievement status for student groups, and 10% on campus status score. For charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System, the weighting of their academic framework scores would be 80% overall A-F score (AEA scaling), 10% Closing the Gaps score (AEA scaling), and 10% campus status score. These changes would further emphasize the goals set forth in Texas’s A-F accountability system to establish high-quality learning opportunities for Texas students.

The financial framework solvency indicators would be renamed to be more accurate, and the weighting of a school’s performance on financial framework indicators would be altered to be based 70% on its score on the Financial Integrity Rating System of Texas (Charter FIRST) and 7.5% on each of the other four indicators.

In the operational framework indicators, the description of the “not applicable” rating under indicator 3a would be clarified to explain that such a rating would result from a school’s data being masked due to small numbers. The rating of “far below” would be eliminated for indicators 3b and 3c to standardize rating categories across indicators. Indicator 3d, “Program requirements: Career and technical education populations,” would be removed because TEA will report on such information under different criteria. To help ensure that charter school board members and officers are prepared to provide quality learning opportunities for Texas students, indicator 3e would be amended to require that in order to achieve a “meets expectations” rating for training requirements, all affected charter board members and school officers must provide TEA with documentation of such training. The explanation of “meets expectations” in Indicator 3I would be amended to pertain to the student body makeup at the charter school level rather than at the campus level to be consistent with other rule language. Indicator 3n, which addresses appropriate handling of secure assessment materials, would be amended to clarify which data would be reviewed to obtain rating information.

The Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks would be amended to cite statutory authority for each indicator. The explanation of "meets expectations" for indicator 1 would be revised to require 50% of the school’s students to perform at or above the passing score on the Texas Success Initiative Assessment (TSIA) to meet statutory requirements for satisfactory performance on an exit-level exam. In keeping with statutory requirements to measure how many program participants successfully complete the program, indicator 2 would be revised to delete unnecessary language and explain that "meets expectations" could be achieved if the number of a school’s graduates were equal to or greater than the number of students classified as 12th graders on its Texas Student Data System Public Education Information
Management System (TSDS PEIMS) snapshot date in the same academic year. The language of Indicator 3 would be revised to clarify that graduates would be the group addressed by that indicator, and the data source would be revised to take into account that the school may provide special industry-based certifications not necessarily delineated by the TEA.

The 2019 CSPF Manual would introduce and detail a tiering system by which charter schools' CSPF scores would be used to designate them as falling into one of three tiers, which would in turn inform TEA's authorizing decisions, including assigning appropriate levels of oversight and determining eligibility for expansion amendments as described in 19 TAC §100.1033, making decisions related to renewal or non-renewal for schools in the discretionary category as defined by TEC, §12.1141(c), and revoking charters that have failed to meet CSPF standards as described in TEC, §12.115(a)(5).

Throughout the manual, language would be revised to reflect the way Charter School Performance Frameworks are referred to in statute and include other technical edits.

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand the existing regulation in that it would revise the title of some indicators on the CSPF, alter the way charter schools' scores are calculated on the CSPF, revise criteria to meet expectations on certain indicators, and specify how CSPF scores would now be used as part of the TEA's authorizing decisions.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Siedlecki has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enfor- cing the proposal would be ensuring that rule language is based on current law and that statutorily required charter school performance frameworks data is gathered and used as accurately as possible. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins November 22, 2019, and ends December 23, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on November 22, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com- missioner_Rules_(TAC)/Proposed_Commissioner_of_Educa- tion_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment imple- ments Texas Education Code, §12.1181 and §29.259.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Frameworks [Framework] (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.


Figure: 19 TAC §100.1010(c)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
The Texas Department of Insurance proposes to amend 28 TAC §3.9901, relating to the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Senate Bill 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. Amending §3.9901 is necessary to implement the provisions of SB 1654, which adopted Insurance Code §425.073. Section 425.073 requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). The valuation manual adopted by the NAIC may be viewed at the following website: www.naic.org/documents/cmte_a_latif_related_val_2020Edition.pdf.

Under §425.073 the Commissioner must adopt the valuation manual, and any changes to it, by rule. Under §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with §425.073. On August 6, 2019, the NAIC voted to adopt changes to the valuation manual. Forty-nine jurisdictions, representing 94.92 percent of the relevant direct written premiums, voted in favor of adopting the amendments. The vote adopting changes to the NAIC valuation manual meets the requirements of §425.073(c).

Section 3.9901 adopts the valuation manual, as required by Insurance Code §425.073. Amending §3.9901 is necessary to adopt the updated valuation manual, as required by Insurance Code §425.073.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards, and under Insurance Code §36.004 TDI must consider whether authority exists to enforce or adopt it. Additionally, under Insurance Code §36.007, an agreement that infringes on the authority of the state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposed rule because §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by NAIC and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enacting or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enacting or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with §425.073 because it does not impose requirements beyond those in the statute. Section 425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. This is because it does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons and no additional rule amendments are required under Government Code §2001.0045, because the proposed adoption of the amended valuation manual is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by SB 1654, 84th Legislature, Regular Session (2015).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., Central time, on December 23, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., Central time, on December 23, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073, enacted by SB 1664, 84th Legislature, Regular Session (2015).


(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 6, 2019 [September 10, 2018], as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

 Filed with the Office of the Secretary of State on November 5, 2019.

TRD-201904112
James Person
General Counsel
Texas Department of Insurance

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 676-6584


TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 295. WATER RIGHTS, PROCEDURAL

SUBCHAPTER G. DESALINATION, PROCEDURAL

30 TAC §295.302

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §295.302.

Background and Summary of the Factual Basis for the Proposed Rule

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website on the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater may be diverted.
This rulemaking would implement the requirement in Texas Water Code (TWC), Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 297, Water Rights, Substantive; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

Section Discussion

§295.302, Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater

The commission proposes to amend §295.302(k). Currently, §295.302(k) requires that an application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater from the Gulf of Mexico include documentation of the results of the consultation with the TPWD and the GLO regarding the point or points from which a facility the person proposes to construct may divert marine seawater or seawater. Proposed §295.302(k) would require that the application include documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with state law to specify that the application for a water right to divert marine seawater for desalination contains documentation that the point is located in an approved zone for the diversion of marine seawater.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law regarding the permitting process associated with marine seawater desalination.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a “Major environmental rule” which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to “protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.”

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to “streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination.” HB 2031 further states that “[t]he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state’s water resources in order to balance this state’s supply and demand for water, which is one of the most precious resources of this state.” Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed rulemaking streamlines the process by authorizing documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawa-
ter are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rule would substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rule because the rule does not impact private real property. In HB 2031, the legislature expressed that "[i]n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real private property rights that have been granted for uses of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rule requires diversion to be located in an approved diversion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

Written comments on the consistency of this rulemaking with CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments
Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Alexander, Water Availability Division at (512) 239-0778.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The proposed amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.

§295.302. Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater.

(a) An application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater must be submitted in accordance with §295.2 of this title (relating to Preparation of Application) and include, for each applicant, the full name, post office address, telephone number, and federal identification number. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If someone [see] other than the named applicant executes the application, the name, position, post office address, and telephone number of the person executing the application shall be given.

(b) The application shall include the signature of the applicant in accordance with §295.14 of this title (relating to Signature of Applicant). Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

(c) The application shall state the location of point(s) of diversion and provide latitude and longitude coordinates in decimal degrees to six decimal places for each point.

(d) The total amount of marine seawater or seawater from a bay or arm of the Gulf of Mexico to be diverted and used shall be stated in definite terms, i.e., a definite number of acre-feet annually and the application shall state the maximum rate of diversion in gallons per minute or cubic feet per second for each diversion point.

(e) The application shall state each purpose of use in definite terms. If the application requests authorization to use marine seawater for multiple purposes, the application shall expressly state an annual amount of marine seawater to be used for the multiple purposes as well as for each purpose of use.

(f) The applicant shall provide evidence that the marine seawater or seawater diverted from a bay or arm of the Gulf of Mexico will be treated in accordance with applicable commission rules, based on the purpose for which the water is to be used, before it is used.

(g) The application must include a water conservation plan meeting the requirements contained in §297.208 of this title (relating to Consideration of Water Conservation).

(h) The application shall contain information describing how it addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan or, in the alternative, describe conditions that warrant a waiver of this requirement.

(i) The application must include a determination of the total dissolved solids concentration of the marine seawater or seawater at the water source based on monthly sampling and analysis, as described in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration), and provide the data collected to the commission.

(j) The application shall provide documentation that the applicant will take reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater or seawater as described in §297.209 of this title (relating to Impingement and Entrainment).

(k) The application shall include:

(1) documentation that points or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or

(2) documentation of the results of the consultation with the TPWD [Texas Parks and Wildlife Department] and the GLO [Texas General Land Office] regarding the point or points from which a facility the person proposes to construct may divert [marine seawater or] seawater.

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

Filed with the Office of the Secretary of State on November 6, 2019.

TRD-201904147
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 293-1806

CHAPTER 297. WATER RIGHTS, SUBSTANTIVE
SUBCHAPTER K. DESALINATION, SUBSTANTIVE
30 TAC §297.202
The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §297.202. Background and Summary of the Factual Basis for the Proposed Rule
In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website in the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater could be diverted for industrial purposes.

This rulemaking would implement the requirement in Texas Water Code (TWC), Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

Section Discussion
§297.202, Approval Criteria for Diversion of Marine Seawater and Seawater
The commission proposes to amend §297.202(5) which currently states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the applicant has provided documentation of the results of the consultation with the TPWD and the GLO (required by current §295.302). Proposed §297.202(5) states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the application includes documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted; or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Fiscal Note: Costs to State and Local Government
Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with state law to specify that the application for a water right to divert marine seawater for desalination contains documentation that the point is located in an approved zone for the diversion of marine seawater.

Public Benefits and Costs
Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with the state law regarding the permitting process associated with marine seawater desalination.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement
The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment
The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment
No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis
The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement
The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state’s economy.

Draft Regulatory Impact Analysis Determination
The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which
is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "[t]he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed amendment in Chapter 297 streamlines the process by authorizing documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rule would substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this rule does not impact private real property. In HB 2031, the legislature expressed that "[i]n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or private real property rights that have been granted for uses of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

44 TexReg 7132  November 22, 2019  Texas Register
Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rule requires diversion to be located in an approved diversion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 2015 in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kathy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Alexander, Water Availability Division, at (512) 239-0778.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The proposed amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.


The commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if:

1. the application conforms to the requirements prescribed by §295.302 of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and is accompanied by the prescribed fee;
2. the point of diversion is located less than three miles seaward of any point located on the coast of this state; or the water contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter, in accordance with the requirements set out in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration);
3. the diverted marine seawater or seawater is intended for a beneficial use and the marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used, before it is used;
4. the application is not detrimental to the public welfare;
5. the applicant has provided documentation;

(A) that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or
(B) [œ] the results of the consultation with the TPWD and GLO regarding the location of a facility the person proposes to construct for diversion of seawater [Texas Parks and Wildlife Department and the Texas General Land Office];

6. the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement; and
7. the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions).

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

Filed with the Office of the Secretary of State on November 6, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 293-1806

CHAPTER 318. MARINE SEAWATER DESALINATION DISCHARGES
SUBCHAPTER A. GENERAL REQUIREMENTS FOR MARINE SEAWATER DESALINATION DISCHARGES
The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §318.9 and simultaneously proposes new §318.9.

Background and Summary of the Factual Basis for the Proposed Rules

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects.

Additionally, HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 (TPWD/GLO study) and developed a map depicting the diversion and discharge zones which is available on the GLO website on the Coastal Resources Management Viewer (CRM Viewer).

This rulemaking would implement the requirement in TWC, Chapter 18, for the commission to designate appropriate discharge zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 295, Water Rights, Procedural; and, 30 TAC Chapter 297, Water Rights, Substantive, to designate appropriate diversion zones by rule.

Section by Section Discussion


The commission proposes the repeal of §318.9 which requires applicants for near-shore and off-shore discharges from marine seawater desalination facilities to consult with TPWD and GLO regarding the discharge location which is required by TWC, §18.005(h) until the commission adopts rules under TWC, §18.005(g) designating discharge zones.

The commission proposes a new §318.9, which would require marine seawater desalination facilities for near-shore and offshore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

The rulemaking is proposed in order to adopt the zones that were identified in the report by TPWD and the GLO for the discharge of waste resulting from the desalination of marine seawater.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state’s economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a “Major environmental rule” which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to “protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.”
First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "[t]he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed rulemaking streamlines the process by authorizing marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rulemaking will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Taking Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rulemakings constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rulemaking would substantially advance this stated purpose by requiring marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because these rules do not impact private real property. In HB 2031, the legislature expressed that "[i]n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real property rights that have been granted for uses of the water in the Gulf of Mexico. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rulemaking in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rulemaking includes: discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rulemaking is consistent with these CMP goals and policies because this rulemaking does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rulemaking does not allow a discharge from marine seawater desalination projects into or adjacent to water in the state, except in accordance with an individual permit issued by the commission. Individual permits issued under this proposed rulemaking will include effluent limitations to ensure compliance with water quality standards. The proposed
rulemaking requires wastewater discharges to be located in an approved discharge zone in the Gulf of Mexico.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m., in Room 2015 in Building E, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

30 TAC §318.9

Statutory Authority

The repeal of §318.9 is proposed under Texas Water Code (TWC), §5.013, concerning the commission’s general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission’s approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission’s general authority to adopt rules for waste discharge or impeding waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission’s authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission’s authority to prevent a discharge of waste that is injurious to public health.

The proposed repeal implements TWC, §18.005 and House Bill (HB) 2031 passed by the 84th Texas Legislature, 2015.


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

Filed with the Office of the Secretary of State on November 6, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 293-1806

30 TAC §318.9

Statutory Authority

New §318.9 is proposed under Texas Water Code (TWC), §5.013, concerning the commission’s general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103 concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission’s approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission’s general authority to adopt rules for waste discharge or impeding waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission’s authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission’s authority to prevent a discharge of waste that is injurious to public health.

The proposed new section implements TWC, §18.005, and House Bill 2031 passed by the 84th Texas Legislature, 2015.


For near-shore discharges or off-shore discharges, the point at which a facility may discharge wastewater resulting from the desalination of marine seawater must be located in a discharge zone recommended and depicted by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) pursuant to Marine Seawater Desalination Diversion and Discharge Zones Study (September 2018) as amended, available on the TPWD website, and as depicted on the Coastal Resources Management Viewer, on the GLO website.

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

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Robert Martinez
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
The Comptroller of Public Accounts proposes amendments to §3.602, concerning licenses and certificates, renewals and due dates, occupation tax permits and exemptions. The proposed amendments define terms used in the section, add information concerning license and registration holder’s fees, and provide details relating to displaying occupational tax permits.

For consistency with the wording in Occupations Code, Chapter 2153 (Coin-Operated Machines), the comptroller replaces the term "operate" with the phrase "exhibit or display" throughout the section in reference to the activities for which a license is required.

The comptroller amends subsection (a) to add definitions. In paragraph (1), the comptroller defines the term "coin-operated amusement machine." The definition incorporates information from §3.601(a)(4) and (5) of this title, concerning Definitions, Changes in Ownership, Gross Receipts Regulations, and Record Keeping Requirements. §3.601 defines both "machine or amusement machine," which is a machine that vends or dispenses music or is operated for skill or pleasure, and "machines designed exclusively for children," which are machines that can only be used by a child under 12 years of age. The proposed definition is also consistent with the definitions of the terms "coin-operated machine," "music coin-operated machine," and "skill or pleasure coin-operated machine" in Occupations Code, §2153.002(1), (4), and (9) (Definitions). Throughout the section, the comptroller replaces the terms "amusement machine" and "coin-operated machine" with the defined term "coin-operated amusement machine."

The definitions for the different types of license holders (general business, import, and repair) in paragraphs (2), (3), and (6) come from Occupations Code, §2153.152 (Types of Licenses).

In paragraph (4), the comptroller gives the term "person" a meaning consistent with the definition of the term in Occupations Code, §2153.002(7). Because the definition of "person" in the Occupations Code begins with "includes," a term of enlargement, the comptroller adds the phrase "or other organization or legal entity," consistent with Business Organizations Code §1.002(9-b) (Definitions).

In paragraph (5), the comptroller gives "registration certificate holder" the meaning assigned in Occupations Code, §2153.156 (Registration Certificate Required).

In paragraph (7), the comptroller defines the term "tax permit" using the definition assigned to "permit" in §3.601 of this title. The comptroller uses the term "tax permit" in this section to be consistent with Occupations Code, §2153.406 (Tax Permit). The comptroller reletters subsequent subsections.

The comptroller amends relettered subsection (b)(1) to identify the annual fees for each type of license and for registration certificates. These fees are statutory. See Occupations Code, §2153.154 (License Fee). The comptroller removes the word "quarterly" from the statement that fees cannot be prorated quarterly because annual fees may not be prorated at all under the statute. Compare Occupations Code, §2153.154, providing for an annual license fee and stating that the comptroller may not refund any part of a license fee after a license is issued, with Occupations Code, §2153.403 (Prorated Tax), which provides that the occupation tax on a coin-operated machine may be prorated quarterly.

The comptroller amends relettered subsection (b)(2), concerning the age requirement, to add a reference to registration certificates, as well as licenses. The comptroller replaces the phrase "natural person" with "individual" for consistency with other parts of the section and with Occupations Code, Chapter 2153. The subsection is also revised to make clear that the comptroller will not issue a license or registration certificate to a minor under 18 years of age.

The comptroller amends relettered subsection (b)(5), concerning the occasional sales exemption for a registration certificate holder, to make the section read more easily. A registration certificate holder is not required to obtain a general business license or import license if the certificate holder is not in the business of selling machines and falls under the occasional sales exemption.

The comptroller amends relettered subsection (c), concerning annual general business, import, and repair license renewals and annual occupation tax, to delete the phrase "and annual occupation tax." The occupation tax is addressed in relettered subsection (e). In addition, the comptroller adds additional information from Occupations Code, Chapter 2153 not currently contained in this subsection. New paragraph (3) explains that annual license fees cannot be prorated and must be submitted with an application. Occupations Code, §2153.153 (License Application Requirements). New paragraph (4) incorporates details for late-filed license renewal applications for unexpired licenses. See Occupations Code, §2153.162(a) (License and Registration Renewal). The comptroller adds paragraph (5) to incorporate details for late-filed license renewal applications for expired licenses pursuant to Occupations Code, §2153.162(b), (c). In paragraph (5), the comptroller also memorializes current agency practice requiring a person who has operated under an expired license for two or more years to pay all past due fees prior to applying for a new license.

The comptroller also amends relettered subsection (d), concerning annual registration certificate renewals and annual occupation tax, to delete the phrase "and annual occupation tax." The occupation tax is addressed in relettered subsection (e). In addition, the comptroller adds information from Occupations Code, Chapter 2153 not currently contained in this subsection. The comptroller amends paragraph (3) to remove the term "quarterly" and remove references to license fees because that information has been added in subsection (c)(3). The comptroller adds paragraphs (4) and (5) to incorporate details for late-filed applications for registration certificate renewals and memorialize current agency practice. See Occupations Code, §2153.162.

The comptroller amends relettered subsection (e), concerning occupation tax permits, to make the information easier to read. The comptroller revises subsection (e)(1) to explain when the occupation tax is due and to add that an owner pays the occupation tax by purchasing a tax permit. See Occupations Code, §§2153.401 (Imposition of Tax), 2153.404 (Collection), and 2153.406.

The comptroller amends subsection (e)(2) to remove the attached graphic with the rate schedule and incorporate the information directly into the section as new subparagraphs (A) through (D). Because there is no longer an attached rate schedule, the comptroller changes the heading of the paragraph to "tax rate."
The comptroller amends subsection (e)(3) to emphasize that the duplicate tax permits may only replace valid tax permits that are lost, stolen, or destroyed. The comptroller does not issue duplicate tax permits to replace invalid tax permits. The comptroller also revises the heading of the paragraph use the lower case, for consistency with the rest of the subsection.

The comptroller makes no substantive revisions to subsection (e)(4).

The comptroller amends subsection (e)(5) to explain how occupational tax permits must be affixed to the coin-operated amusement machine in order for the tax permits to be valid.

The comptroller adds new subsection (e)(6) explaining when a tax permit is invalid and the consequences of a not displaying a valid tax permit. Paragraph (6)(A) explains that a new tax permit affixed on top of an old tax permit is invalid because it is not affixed to a permanent surface of the machine. Similarly, a new tax permit affixed on any removable portion of the machine is invalid. Paragraph (6)(B) states that an invalid tax permit may only be replaced with a new tax permit. Paragraph (6)(C) is based upon Occupations Code, §2153.354 (Civil Penalty) and addresses the penalties for exhibiting or displaying a coin-operated amusement machine without a valid tax permit. Subsequent paragraphs are renumbered.

The comptroller amends renumbered paragraph (7), to use the term "owner" instead of "taxpayer." See Occupations Code, §2153.406.

The comptroller reorganizes the section to add new subsection (f), concerning exemptions, and reletters current subsections (d)(7) and (8) as subsections (f)(1) and (2). The comptroller adds paragraph (3) to address private ownership of machines. See Occupations Code, §2153.006 (Private Ownership Exempt).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by memorializing the agency's current practices and definitions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to James D. Arbogast, Chief Counsel, Hearings & Tax Litigation Division, P.O. Box 13528, Austin, Texas 78711-3528 or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

This amendment is proposed under Occupations Code, §2153.052 (Rulemaking Authority) and Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provide the comptroller with the authority to prescribe, adopt, and enforce procedural and due process rules relating to the administration and enforcement of the provisions of Occupations Code, Chapter 2153 (Coin-Operated Machines).

The amendment implements Occupations Code, §2153.051 (General Duties of Comptroller) and all other statutory provisions identified in the preamble that are cited in relation to specific proposed amendments.

§3.602. Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions.

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

(1) Coin-operated amusement machine--Any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, that vends or dispenses music or is operated for skill or pleasure. The term does not include an amusement machine designed exclusively for children under 12 years of age.

(2) General business license holder--A person who may engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, maintaining, transporting, or exhibiting in Texas, or storing a coin-operated amusement machine.

(3) Import license holder--A person who may engage in the business of importing, transporting, owning, repairing, selling, or delivering a coin-operated amusement machine for sale or delivery in this state.

(4) Person--An individual, association, trustee, receiver, partnership, corporation, or other organization or legal entity, or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or other organization or legal entity.

(5) Registration certificate holder--A person who is exempt from the licensing and recordkeeping requirements in Occupations Code, Chapter 2153 (Coin-Operated Machines) but who may not exhibit a coin-operated amusement machine unless the machine is registered annually with the comptroller.

(6) Repair license holder--A person who may engage in the business of maintaining, transporting, or storing a coin-operated amusement machine.

(7) Tax permit--The decal issued by the comptroller to an owner of a coin-operated amusement machine evidencing the payment of the occupation tax.

(b) [¶6] Licenses and registration certificates.

(1) Annual general business, import, and/or repair license fees, and registration certificate fees. Annual license and registration certificate fees for a general business license holder, import license holder, repair license holder, and a registration certificate holder are payable in advance and cannot be prorated. The annual fees are as follows: [Quarterly]

(A) for a general business license applicant with 50 or fewer machines, the fee is $200;

(B) for a general business license applicant with 51 to 200 machines, the fee is $400;

(C) for a general business license applicant with over 200 machines, the fee is $500;

(D) for an import license applicant, the fee is $500;
(E) for a repair license applicant, the fee is $50; and

(F) for a registration certificate applicant, the fee is $150.

(2) Age requirement for issuance of a license or registration certificate. No individual [natural person] shall be issued a license or registration certificate by the comptroller for the operation of coin-operated amusement machines unless at the time the license or certificate is issued the applicant is [more than] 18 years of age or older.

(3) Information requirement for issuance of a license or registration certificate. An applicant for a license or registration certificate must provide all information required on the [by] comptroller’s application before a license or registration certificate will be issued or renewed.

(4) General business license and registration certificate notification requirement. A general business license holder must notify the comptroller in writing within 10 days of any change in ownership of a coin-operated amusement machine. A registration certificate holder must notify the comptroller in writing of any change in ownership of a coin-operated amusement machine and each time the location of a machine is changed within 10 days of the change.

(5) Occasional sale exemption for registration certificate holder. A registration certificate holder may sell two [make one or two sales of] coin-operated amusement machines during any 12-month period without being required to obtain a general business or import license, if the certificate holder does not hold out as engaging (or does not habitually engage) in the business of selling, leasing, or renting coin-operated amusement machines [without losing the licensing exemption]. Before the third sale of a coin-operated amusement machine in a 12-month period by a registration certificate holder not previously in the business of selling, leasing, or renting coin-operated amusement machines, a general business or import license must be obtained. The transfer of title or possession of more than one machine in a single transaction will constitute one sale.

(c) [4b] Annual general business, import, and repair license renewals, and annual occupation tax.

(1) License renewal applications are due November 30. License renewal applications will not be considered complete for processing unless the tax due and the registration fee are remitted. Complete license renewal applications filed after the due date may result in the renewal license being issued after December 31, the expiration date of the existing license. In such a case a person may not operate coin-operated amusement machines after the expiration date until the renewal license is issued. A person who operates coin-operated amusement machines without a license or with an expired license is guilty of a Class A misdemeanor.

(2) An applicant who properly completes the registration certificate renewal application and remits all fees and taxes with it by the due date may continue to exhibit or display coin-operated [operate] amusement machines after the expiration date even if the registration certificate renewal has not been issued, unless the applicant is notified by the comptroller prior to the registration certificate expiration date of a problem with the registration certificate renewal.

(3) Registration [License and registration] certificate fees may not be prorated [ quarterly] and the [annual license or] registration fee must be submitted with the registration certificate renewal [as] application.

(4) Late-filed application for registration certificate renewal. If an application for renewal of an unexpired registration certificate is postmarked December 1 - December 31, the applicant must remit a late fee of $50 in addition to the annual registration certificate fee listed in subsection (b)(1) of this section.

(5) Application for renewal of an expired registration certificate.

(A) A registration certificate holder may renew an expired registration if it has not been expired for more than 90 days by paying to the comptroller a fee that is 1-1/2 times the amount of the annual license fee listed in subsection (b)(1) of this section.

(B) A registration certificate holder may renew an expired registration if it has been expired for more than 90 days but less than two years by paying to the comptroller a fee that is two times the amount of the annual license fee listed in subsection (b)(1)(F) of this section.
(C) A person whose registration has been expired for two years or more may not renew their registration and must comply with the requirements and procedures for obtaining a new registration certificate under subsection (b) of this section. In addition to other penalties allowed by law, each person whose registration has been expired for two years or more and who has been engaged in business as a registration certificate holder must remit to the comptroller an amount equal to two times the amount of the annual registration fee listed in subsection (b)(1) of this section for each year that the person engaged in business with an expired registration.

(e) [(d)] Occupation tax permits.

(1) Occupation tax. Each coin-operated amusement machine that an owner [is subject to the occupation tax at the time a person] exhibits, displays, or permits [a machine] to be exhibited or displayed in this state is subject to an annual occupation tax. With the exception of annual renewals, the occupation tax is due at the time the owner exhibits or displays the machine, or permits the machine to be exhibited or displayed, in this state. [with the exception of annual renewal] The occupation tax for annual renewals for each machine exhibited or permitted to be exhibited or displayed in this state is due November 30 of each year. The purchase of a tax permit is payment of the occupation tax.

(2) Tax rate [Rate schedule]. The tax rate is $60 per year. When a coin-operated amusement machine is [following rate schedule will be applicable to machines] first exhibited or displayed or permitted to be exhibited or displayed in this state, the occupation tax for [in any quarter of] the calendar year is prorated as follows:[1]

(A) for a tax permit issued January 1 to March 31, the amount of tax is $60;

(B) for a tax permit issued April 1 to June 30, the amount of tax is $45;

(C) for a tax permit issued July 1 to September 30, the amount of tax is $30; and

(D) for a tax permit issued October 1 to December 31, the amount of tax is $15.

[Figure: 34 TAC §2.602(d)(2)]

(3) Replacement of lost, stolen, or destroyed valid occupation tax permits [Occupation Tax Permits]. The comptroller shall provide a duplicate tax permit if a valid tax permit has been lost, stolen, or destroyed. The fee for each duplicate tax permit is $5.00. If a valid tax permit is lost, stolen, or destroyed, a written statement must be submitted explaining the circumstances by which the tax permit was lost, stolen, or destroyed, and must include [including] the number of the lost, stolen, or destroyed tax permit[s] before a replacement tax permit can be issued. A tax permit for which a duplicate permit has been issued is void.

(4) Assignment of tax permits. Each coin-operated amusement machine exhibited or displayed in Texas [operated] for music, skill, or pleasure shall be registered with the comptroller by make, model, and serial number. A tax permit issued by the comptroller shall be affixed to each registered machine. Each coin-operated amusement machine shall have a serial number, and the name and telephone number of the owner of each [said] machine must be clearly visible on the outside surface of the machine [cabinet]. If a coin-operated machine is not manufactured with a serial number, a license holder [licensee] or registration certificate holder shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine cabinet. If all these requirements have been met, a tax permit may be assigned to a purchaser by submitting written notice, as described in subsection (b)(4) [(d)(4)] of this section, to the comptroller within 10 days of the transfer of title or possession of a coin-operated amusement machine.

(5) Attachment of tax permits. Tax permits shall be conspicuously [securely] affixed to any permanent surface of the coin-operated amusement [on a machine to make] [in such a manner that] the tax permit visible for inspection without movement of the machine. Tax permits shall be securely and completely affixed to the coin-operated amusement machine so they can [be] removed [from] should not be removed without [the] continued application of steam and water. Tax permits shall be affixed [attached] to a permanent surface of the coin-operated amusement machine by use of the adhesive exposed on the back of the tax permit following complete removal of the protective backing. It is unlawful to affix any tax permit in a plastic cover, or on a removable cover made of plastic, metal, or any other material, or to in any way affix the tax permit in a less than permanent manner so the tax permit can be removed or moved from one machine to another without the destruction of the tax permit resulting as a consequence of such removal. Tax permits shall not be affixed by the use of tape. Tax permits are not transferrable from one person to another or from one machine to another, and cannot be affixed to a machine that has not been registered with the comptroller [that has not been registered with the comptroller].

(6) [Valid tax permits].

(A) Any tax permit not properly displayed as described in paragraph (5) of this subsection is invalid. Any tax permit not affixed to a permanent surface of a coin-operated amusement machine as described in paragraph (5) of this subsection by the adhesive backing on the permit is invalid. Any tax permit removed from a coin-operated amusement machine is invalid.

(B) The comptroller will not issue a duplicate tax permit to replace a tax permit that is invalid. A new tax permit must be purchased to replace an invalid tax permit.

(C) The comptroller may assess a penalty of not less than $50 or more than $2,000 against an owner who permits a coin-operated amusement machine under the owner’s control to be operated, exhibited, or displayed in this state without a valid tax permit or against a person who exhibits or displays a coin-operated amusement machine in this state without a valid tax permit. The comptroller may assess a penalty for each day a violation occurs.

(7) [Attachment of extra tax permits. The comptroller will issue tax permits only for coin-operated amusement machines that are exhibited or displayed on location. The owner [taxpayer] shall not stockpile permits or attach tax [Nor shall any] permits be affixed to unregistered machines.]

(8) [Exemptions].

(1) Establishing an exemption. In order to establish that an organization is exempt from the license requirements pursuant to [the Coin-Operated Machines] Occupations Code, §2153.005 (Exempt Corporations and Associations), the organization must do the following:

(A) submit a written statement to the comptroller explaining [setting out] in detail the nature of the activities conducted or to be conducted, a copy of the articles of incorporation if the organization is a corporation, a copy of the bylaws, a copy of any applicable trust agreement or a copy of its constitution, and a copy of any letter granting exemption from the Internal Revenue Service; and

(B) furnish any additional information requested by the comptroller including, but not limited to, documentation showing all
services performed by the organization and all income, assets, and liabilities of the organization.

(2) [§210] Written notice. After a review of the material, the comptroller will inform the organization in writing if it qualifies for an exemption.

(3) Private ownership exemption. An individual who owns a coin-operated amusement machine for personal use in the individual's private residence is not required to obtain a license or pay a tax under this section.

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

Filed with the Office of the Secretary of State on November 6, 2019.

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 475-0387

34 TAC §3.603

The Comptroller of Public Accounts proposes amendments to §3.603, concerning denials; suspensions; revocations; violations; hearings. The proposed amendments provide additional guidance about the process for a license or permit suspension or revocation, or penalty imposition, consistent with applicable laws and current agency practice.

Throughout the section, the comptroller replaces the term "licensee" with "license holder" and the phrase "owner of the registration certificate" with the phrase "registration certificate holder" for consistency with Occupation Code, §2153.301 (Definition).

The comptroller adds new subsection (a) to add reference to the terms defined in §3.602 of this title, concerning Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions. The comptroller reletters subsequent subsections.

The comptroller amends relettered subsection (b) to add a reference to the Occupations Code and to provide 20 calendar days' notice to request a hearing, which is consistent with Occupations Code, §2153.306 (Determination Hearing), rather than the current 15 days. The comptroller adds a statement that the notice issued to an applicant, license holder, or registration certificate holder will include the proposed final action of the comptroller. This language was previously located in subsection (d).

The comptroller deletes existing subsection (b) because the material addressed in the existing subsection is addressed in new subsection (d).

The comptroller revises the punctuation of subsection (c) to make the subsection easier to read. The comptroller further amends the subsection for clarity. No substantive changes are intended as a result of these amendments.

The comptroller adds new subsection (d) to incorporate information formerly found in subsection (b) concerning the burden of proof for the applicant, license holder, or registration certificate holder. In the new subsection, the comptroller updates the reference to the Rules of Practice and Procedure, effective January 1, 2019, and revises the description of the "burden of proof" using the terminology of the Rules of Practice and Procedure. See §1.26 of this title, concerning Burden and Standard of Proof in Contested Cases.

The comptroller deletes the text of current subsection (d) because the information is now located in relettered subsection (b).

The comptroller amends subsection (e) to update the number of days in which a hearing may be requested from 15 days to 30 calendar days in accordance with Occupations Code, §2153.306.

The comptroller amends subsection (f) for clarity. No substantive change is intended as a result of these amendments.

The comptroller deletes subsection (g), concerning the requirement to provide a court reporter. All hearings pursuant to this section will be conducted by the State Office of Administrative Hearings.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by memorializing the agency's current practices and definitions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to James D. Arbo, Est, Chief Counsel, Hearings & Tax Litigation Division, P.O. Box 13528, Austin, Texas 78711-3528 or james.arbo-gast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

This amendment is proposed under Occupations Code, §2153.052 (Rulemaking Authority) and Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provide the comptroller with the authority to prescribe, adopt, and enforce procedural and due process rules relating to the administration and enforcement of the provisions of Occupations Code, Chapter 2153 (Coin-Operated Machines).

The amendments implement Government Code, Chapter 2001 (Administrative Procedures Act); Occupations Code, Chapter 2153 (Coin-Operated Machines); and the relevant portions of §§1.1 - 1.35 of this title (relating to Rules of Practice and Procedure).

§3.603. Denials; Suspensions; Revocations; Violations; Hearings.

(a) License holder, when used in this section, means a general business license holder, import license holder, or a repair license holder as these terms are defined in §3.602 of this title (relating to Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions).
If the comptroller determines an applicant is not eligible for a new or renewal license under Occupations Code, Chapter 2153 (Coin-Operated Machines), or if the comptroller proposes to impose sanctions or [suspend,] or revoke a license or registration certificate, the comptroller will notify the applicant, license holder, or registration certificate holder [licensee] in writing of the proposed action and will state the alleged violation or violations which constitutes grounds for a denial, suspension, or revocation of the license or certificate, or other sanctions. The notice will include the proposed final action of the comptroller. [Reasons for each action.] The applicant, license holder [licensee], or registration certificate holder may make a written request for a hearing within 20 calendar [44] days of the date of service of the notice.

The hearing will be conducted in accordance with the relevant portions of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). The burden of proof is upon the applicant, licensee, or registration certificate holder to establish its position by a preponderance of the evidence.

The comptroller may serve the notice in person or may send the notice [The notice will be served personally by the comptroller or an authorized representative upon an applicant or licensee or owner of a registration certificate or sent] by United States certified mail addressed to the applicant, license holder, [or licensee] or [owner of a] registration certificate holder at its last known address; or, if [as] the event that notice cannot be delivered [effected] by other methods after due diligence, notice will be effective by publishing notice of the[] proposed action in a newspaper of general circulation in the area in which the license holder [licensee], applicant, or [owner of the] registration certificate holder conducts its business activities.

The comptroller may serve the notice in person or may send the notice [The notice will be served personally by the comptroller or an authorized representative upon an applicant or licensee or owner of a registration certificate or sent] by United States certified mail addressed to the applicant, license holder, [or licensee] or [owner of a] registration certificate holder at its last known address; or, if [as] the event that notice cannot be delivered [effected] by other methods after due diligence, notice will be effective by publishing notice of the[] proposed action in a newspaper of general circulation in the area in which the license holder [licensee], applicant, or [owner of the] registration certificate holder conducts its business activities.

If the applicant, license holder [licensee], or registration certificate holder does not request a hearing within 20 calendar [44] days after the date of service of the notice of the comptroller’s proposed action, the hearing is waived and the comptroller’s proposed action shall be considered the final order or ruling of the comptroller.

After a hearing, any [any,] order of the comptroller refusing an application or revoking or suspending a license or registration certificate or imposing other sanctions shall state the reasons therefor, and a copy of the order shall be served [delivered] immediately on [to] the applicant, license holder [licensee], or registration certificate holder in accordance with the procedure in subsection (c) of this section.

A court reporter shall be present at every hearing involving an applicant, licensee, or registration certificate holder. The cost of transcribing the hearing by the reporter shall be assessed against the applicant, licensee, or registration certificate holder following the hearing. Should the comptroller determine a transcript of the hearing is required, the cost of the original transcript shall be assessed to the applicant, licensee, or registration certificate holder. They may purchase a copy of the transcript for their own use directly from the court reporter. Should the comptroller determine a transcript is not required, the applicant, licensee, or registration certificate holder may purchase a copy of the transcript for its own use directly from the court reporter. If they purchase a copy of the transcript, they shall provide, at their own cost, the original transcript to the comptroller.

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

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) proposes amendments to §211.1, concerning Definitions. Paragraphs (1) - (3) in subsection (a) are being amended to include any successors of the Southern Association of Colleges and Schools. Subsection (b) is amended to reflect the effective date of the changes.

The proposed amendments include any successors of the Southern Association of Colleges and Schools under Texas Occupations Code, Section 1701.151.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering the amendments.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly listing those required to take the training.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

1. the proposed rule does not create or eliminate a government program;
2. implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
4. the proposed rule does not require an increase or decrease in fees paid to the agency;
5. the proposed rule does not create a new regulation;
(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

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

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendments are proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§211.1 Definitions.

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into [an applicant's personal history that meets or exceeds the commission-developed questionnaire or an applicant's personal history [statement] as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A [a] person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: [-] videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.
(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorary Retired Peace Officer--An [an] unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorary Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: [-] measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(40) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(41) Licensee--An individual holding a license issued by the commission.

(42) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(43) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(44) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(45) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(46) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(47) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(48) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(49) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(50) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(51) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(52) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(53) Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(54) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.
55. Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

56. School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

57. Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

58. Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

59. SOAH--The State Office of Administrative Hearings.

60. Successful completion--A minimum of:
   (A) 70 percent or better; or
   (B) C or better; or
   (C) pass, if offered as pass/fail.

61. TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

62. Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

63. Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

64. Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

65. Training hours--Classroom or distance education hours reported in one-hour increments.

66. Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

67. Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

68. Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is February 1, 2020 [May 1, 2018].

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

Filed with the Office of the Secretary of State on November 5, 2019.

TRD-201904114
Kim Vickers
Executive Director
Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771

37 TAC §211.26

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.26, concerning Law Enforcement Agency Audits. Subsection (c) is amended to change if the audit will be forwarded the chief administrator or governing body. Subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect who may get the audit report.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by allowing the agency audit report to be forwarded to the chief administrator or governing body.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule’s applicability;

(8) the proposed rule does not positively or adversely affect[s] this state’s economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.
The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.162, Records and Audit Requirements.

No other code, article, or statute is affected by this proposal.

§211.26. Law Enforcement Agency Audits.

(a) All law enforcement agencies shall be audited at least once every five years. Agencies with deficiencies will be evaluated more frequently, as determined by the commission.

(b) The commission may use the following information in auditing an agency:

(1) commission records to include but not limited to:
   (A) applications;
   (B) appointment records;
   (C) separation records; and
   (D) training records;
(2) history of previous violations;
(3) reports from past audits;
(4) on-site audits;
(5) reports and complaints from licensees, other law enforcement agencies, and citizens; and
(6) observations by commission staff.

(c) The results of the audit may be forwarded to the chief administrator and governing body.

(d) If deficiencies are identified, the chief administrator must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The commission may conduct a follow-up audit to verify the correction of deficiencies identified in subsection (d) of this section.

(f) Failure to correct deficiencies identified in subsection (d) may result in the imposition of administrative penalties and/or other disciplinary action as provided in §223.1 and §223.2 of this title.

(g) The effective date of this section is February 1, 2020.

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

Filed with the Office of the Secretary of State on November 5, 2019.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: December 22, 2019
For further information, please call: (512) 936-7771

CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION
37 TAC §217.1

44 TexReg 7146   November 22, 2019   Texas Register
Provisional License for Workforce Shortage, Texas Occupations Code §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision, Texas Occupations Code §1701.405, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§217.1. Minimum Standards for Enrollment and Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure. [and:]

(1) a high school diploma;
(2) a high school equivalency certificate; or
(3) for the basic peace officer training course, an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; [or]

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement;

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of a personal history statement that meets or exceeds the Commission-approved personal history statement;

(ii) contact at least three personal references;

(iii) contact all employers for at least the last ten years, if applicable;

(iv) contact the chief administrator or the chief administrator's designee at each of the applicant's previous law enforcement employers; and

(v) complete criminal history and driving records checks.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;
(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual’s satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual’s date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable [or other] discharge [based on misconduct which bars future military service];

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate’s degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed and expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination. [On expiration of a temporary license, a person is not eligible for a new temporary jailer license for one year.]

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is February 1, 2020 [May 4, 2018]. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on November 5, 2019.

TRD-201904116
Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Earliest possible date of adoption: December 22, 2019  
For further information, please call: (512) 936-7771  

37 TAC §217.7  
The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.7, concerning Reporting Appointment and Separation of a Licensee. Subsection (b) is amended to clarify when the separation of the licensee must be reported. Subsection (e) is amended to reflect the effective date of the changes.  
This amendment is necessary to clarify when the separation of the licensee must be submitted.  
John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.  
Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having the separation of a licensee submitted within a certain time frame.  
Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.  
Mr. Beauchamp has determined the following:  
(1) the proposed rule does not create or eliminate a government program;  
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing positions;  
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;  
(4) the proposed rule requires an increase or decrease in fees paid to the agency;  
(5) the proposed rule does not create a new regulation;  
(6) the proposed rule does not expand, limit, or repeal an existing regulation;  
(7) the proposed rule does not increase or decrease the number of individuals subject to the rule’s applicability; and  
(8) the proposed rule does not positively or adversely affect(s) this state’s economy.  
Comments on the proposal may be submitted electronically to public.comment@tcotex.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.  
The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.3071, Issuance of a Telecommunicator License, Texas Occupations Code §1701.451, Pre-employment Request for Employment Termination Report and Submission of Background Check Confirmation Form.  
No other code, article, or statute is affected by this proposal.  
§217.7. Reporting Appointment and Separation of a Licensee.  
(a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:  
(1) obtain the person’s written consent for the agency to view the person’s employment records;  
(2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;  
(3) obtain a completed, signed, and notarized Personal History Statement (PHS);  
(4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;  
(5) obtain proof of eligibility after separation from the military, if applicable;  
(6) conduct and document a background investigation;  
(7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;  
(8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person’s previous law enforcement employers, and document the contact on the F5 return; and  
(9) in addition to the requirements listed in this section:  
(A) For a licensee with more than 180 days since their last appointment:  
(i) obtain a new declaration of psychological and emotional health (L3 Form);  
(ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); and  
(iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.  
(B) For a person’s initial appointment:  
(i) obtain proof of meeting educational requirements;  
(ii) obtain proof of meeting U.S. citizenship requirements;  
(iii) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;  
(iv) obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;  
(v) obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and  
(vi) submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought.
(10) For current licensees, submit a Statement of Appointment (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days after any local employment appeals are exhausted:

1. submit a Separation report (Form F5) to the commission; and

2. provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is February 1, 2020 [May 1, 2018].

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

Filed with the Office of the Secretary of State on November 5, 2019.

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7771

CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §218.3, concerning Legislatively Required Continuing Education for Licensees. Subsections are amended to clarify the requirements for continuing education for licensees pursuant to S.B. 11 (86R), S.B. 1827 (86R), H.B. 1415 (86R), H.B. 2195, (86R), H.B. 1552 (86R), H.B. 3503 (86R), H.B. 1735 (86R), H.B. 292 (86R). Subsection (k) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to S.B. 11 (86R), S.B. 1827 (86R), H.B. 1415 (86R), H.B. 2195, (86R), H.B. 1552 (86R), H.B. 3503 (86R), H.B. 1735 (86R), and H.B. 292 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the requirements for continuing education for licensees.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

1. the proposed rule does not create or eliminate a government program;

2. implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

4. the proposed rule does not require an increase or decrease in fees paid to the agency;

5. the proposed rule does not create a new regulation;

6. the proposed rule expands, limits, or repeals an existing regulation;

7. the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

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

Comments on the proposal may be submitted electronically to public.comment@tcoll.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.


No other code, article, or statute is affected by this proposal.

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years).

1. Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit.

2. Telecommunicators shall complete at least 20 hours of continuing education.

(c) Each training cycle (4 years).

1. Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939),
Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislative required training under another commission license or certificate.

(d) Assignment specific training.

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at [At] least 40 hours of continuing education for constables [each 48 month cycle], as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district with an enrollment of 30,000 or more students must obtain a school-based law enforcement proficiency certificate within [180 [120] days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment (to be added September 1, 2019).

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training.

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed [1 year after licensing].

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is February 1, 2020 [November 1, 2018].

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

Filed with the Office of the Secretary of State on November 5, 2019.

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Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Earliest possible date of adoption: December 22, 2019  
For further information, please call: (512) 936-7771

37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §218.9, concerning Continuing Firearms Proficiency Requirements. Subsection (a)(1) is amended to include firearms certified jailers. Subsection (a)(2)(B) is amended to clarify peace officer or jailer. Subsection (f) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect who is required to complete the required firearms proficiency requirements.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly listing who shall complete the current firearms proficiency requirements.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not creates or eliminates a government program
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency
(4) the proposed rule does not require an increase or decrease in fees paid to the agency
(5) the proposed rule does not create a new regulation
(6) the proposed rule expands, limits, or repeals an existing regulation
(7) the proposed rule increases or decreases the number of individuals subject to the rule’s applicability
(8) the proposed rule does not positively or adversely affect/s this state’s economy.

Comments on the proposal may be submitted electronically to public.comment@tcle.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.


No other code, article, or statute is affected by this proposal.

§218.9. Continuing Firearms Proficiency Requirements.

(a) Each agency or entity that employs at least one peace officer or at least one firearms certified jailer shall:

(1) require each peace officer or firearm certified jailer that it employs to successfully complete the current firearms proficiency requirements at least once each calendar year for each type of firearm carried;

(2) designate a firearms proficiency officer to be responsible for the documentation of annual firearms proficiency. The documentation for each officer shall include:

(A) date of qualification;
(B) identification of peace officer or jailer;
(C) firearm manufacturer, model;
(D) results of qualifying; and
(E) course(s) of fire;

(3) keep on file and in a format readily accessible to the commission a copy of all records of this proficiency.

(b) The annual firearms proficiency requirements shall include:

(1) an external inspection by the proficiency officer, range officer, firearms instructor, or gunsmith to determine the safety and functioning of the weapon(s);

(2) a proficiency demonstration in the care and cleaning of the weapon(s) used; and

(3) a course of fire that meets or exceeds the minimum standards.

(c) The minimum standards for the annual firearms proficiency course of fire shall be:

(1) handguns - a minimum of 50 rounds, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reload;

(2) shotguns - a minimum of five rounds of ammunition fired at a range of at least 15 yards;

(3) precision rifles - a minimum of 20 rounds of ammunition fired at a range of at least 100 yards; however, an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing percentage is raised to 90;

(4) patrol rifles - a minimum of 30 rounds of ammunition fired at a range of at least 50 yards, including at least one timed reload; however, an agency may, in its discretion, allow a range of less than 50 yards but not less than 10 yards if the minimum passing percentage is raised to 90;

(5) fully automatic weapons - a minimum of 30 rounds of ammunition fired at ranges from seven to at least 10 yards, including at least one timed reload, with at least 25 rounds fired in full automatic (short bursts of two or three rounds), and at least five rounds fired semi-automatic, if possible with the weapon.

(d) The minimum passing percentage shall be 70 for each firearm.
(e) The executive director may, upon written agency request, waive a peace officer's demonstration of weapons proficiency based on a determination that the requirement causes a hardship.

(f) The effective date of this section is **February 1, 2020** [February 1, 2016].

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

Filed with the Office of the Secretary of State on November 5, 2019.

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Kim Vickers
Executive Director
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For further information, please call: (512) 936-7771

CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

**37 TAC §219.2**

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.2, concerning Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police. Subsection (b)(2) is amended to clarify which courses are required. Subsection (c)(2), (e)(2), and (g)(2) clarify the continuous years of service required.

This amendment is necessary to reflect the courses and years of service required.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the courses and the years of service required.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

1. the proposed rule does not create or eliminates a government program;
2. implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
4. the proposed rule does not require an increase or decrease in fees paid to the agency;
5. the proposed rule creates a new regulation;
6. the proposed rule expands, limits, or repeals an existing regulation;
7. the proposed rule increases or decreases the number of individuals subject to the rule's applicability;
8. the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this proposal.


(a) To be eligible to take a state licensing examination, an out of state, federal criminal investigator, or military police must comply with all provisions of §219.1 of this chapter and this section.

(b) A prospective out-of-state peace officer, federal criminal investigator, or military police applicant for peace officer licensing in Texas must:

1. meet all statutory licensing requirements of the state of Texas and the rules of the commission;
2. successfully complete a supplementary peace officer training course, the curriculum of which is developed by the commission, any other courses, as required by the commission; and
3. successfully pass the Texas Peace Officer Licensing Examination as provided in §219.1 of this chapter.

(c) Requirements (Peace Officers): Applicants who are peace officers from other U.S. states must meet the following requirements:

1. provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy;
2. have honorably served (employed, benefits eligible) as a sworn full time paid peace officer for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of a state POST approved basic training course;
3. be subject to continued employment or eligible for re-hire (excluding retirement); and
4. the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

(d) Requirements (Federal): The Texas Code of Criminal Procedures Section 2.122 recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration.

(e) Qualifying Federal Officers must:
(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal full time paid capacities for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of a federal agency law enforcement approved basic training course; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Requirements (Military): Must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification approved by the commission.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) active duty service for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of an approved basic military police course.

(h) The applicant must make application and submit any required fee(s) in the format currently prescribed by the commission to take the peace officer licensing exam. The applicant must comply with the provisions of §219.1 of this chapter when attempting the licensing exam.

(i) Required documents must accompany the application:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent’s license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant’s employing agency confirming time in service as a peace officer or federal officer or agent;

(4) a certified or notarized copy of the applicant’s valid state-issued driver’s license;

(5) a certified copy of the applicant’s military discharge (DD-214), if applicable; and

(6) for applicants without a valid Texas drivers license, a passport-sized color photograph (frontal, shoulders and face), signed with the applicant’s full signature on the back of the photograph.

(j) The commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) Any applicant may be denied because of disciplinary action, including suspension or revocation, or misconduct in another jurisdiction.

(m) All documents must bear original certification seals or stamps.

(n) The effective date of this section is February 1, 2020 [July 12, 2012].

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

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37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.11, concerning Reactivation of a License. Subsections (d), (e), and (h) are amended to clarify which license is being reactivated. Subsection (i) is added to reflect the effective date of the changes.

This amendment is necessary to reflect which license is being reactivated.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly stating which license is being reactivated.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule’s applicability; and
(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.316, Reactivation of a Peace Officer License, Texas Occupations Code §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

No other code, article, or statute is affected by this proposal.

§219.11. Reactivation of a License.

(a) The commission will place all licenses in an inactive status at the end of the most recent training unit or cycle in which the licensee:

(1) was not appointed at the end of the unit or cycle; and

(2) did not meet continuing education requirements.

(b) The holder of an inactive license is unlicensed for all purposes.

(c) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) The requirements to reactivate a license for a peace officer [person] with less than 10 years of full-time service are:

(1) If less than two years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(2) If two years but less than five years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course;

(C) make application and submit any required fee(s); and

(D) pass the licensing exam.

(3) If more than five years but less than ten years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course; and

(C) make application and submit any required fee(s).

(4) Ten years or more from last appointment:

(A) meet current enrollment standards;

(B) meet current licensing standards;

(C) successfully complete the applicable basic licensing course;

(D) make application and submit any required fee(s); and

(E) pass the licensing exam.

(e) The requirements to reactivate a license for a peace officer [person] with 10 years but less than 15 years of full-time service are:

(1) If less than two years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(2) If two years but less than five years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course;

(C) make application and submit any required fee(s); and

(D) pass the reactivation exam.

(3) If more than five years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course and a skills assessment course;

(C) make application and submit any required fee(s); and

(D) pass the reactivation exam.

(f) Unless exempted by Texas Occupations Code Section 1701.356, the requirements to reactivate a license for an honorably retired peace officer are:

(1) meet current licensing standards;

(2) meet current continuing education requirements; and

(3) make application and submit any required fee(s).

(g) School marshal licenses are subject to the reactivation and renewal procedures related to school marshals under Chapter 227 of this title.

(h) The requirements to reactivate a jailer or telecommunicator license are:

(1) If less than two years from last appointment:

(A) meet current licensing standards;

(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(2) If two years but less than five years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements;

(C) make application and submit any required fee(s);

and

(D) pass the licensing exam.

(3) If more than five years from last appointment:

(A) meet current licensing standards;

(B) successfully complete the applicable basic licensing course;

(C) make application and submit any required fee(s);

and

(D) pass the licensing exam.

(i) The effective date of this section is February 1, 2020 [February 1, 2016].

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

Filed with the Office of the Secretary of State on November 5, 2019.

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Kim Vickers

Executive Director

Texas Commission on Law Enforcement

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For further information, please call: (512) 936-7771

CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.1, concerning Proficiency Certificate Requirements. Subsection (a)(1) is added to clarify credit given towards proficiency certification pursuant to HB 971 (86R). Subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to HB 971 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying credit given toward proficiency certification.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not creates or eliminates a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;

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

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.


No other code, article, or statute is affected by this proposal.

§221.1. Proficiency Certificate Requirements.

(a) The commission shall issue proficiency certificates in accordance with the Texas Occupations Code §1701.402. Commission certificates issued pursuant to §1701.402 are neither required nor a prerequisite for establishing proficiency or training. The commission shall give credit toward proficiency certification for successful completion of hours or degrees at accredited colleges and universities or for military service.

(b) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

(1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, Firearms Proficiency for Juvenile Probation Officers or Instructor Proficiency);

(3) must not have license(s) under suspension by the commission within the previous 5 years;

(4) meet the continuing education requirements for the previous training cycle;

(5) for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm; and

(6) academic degree(s) must be issued by an accredited college or university.
(c) The commission may refuse an application if:
   (1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;
   (2) an applicant has not affixed any required signature;
   (3) required forms are incomplete;
   (4) required documentation is incomplete, illegible, or is not attached; or
   (5) an application contains a false assertion by any person.
(d) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:
   (1) by mistake of the commission or an agency; or
   (2) based on false or incorrect information provided by the agency or applicant.
(e) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.
(f) The issuance date of a proficiency certificate may be changed upon submission of an application along with documentation supporting the proposed date of eligibility and payment of any required fee.
(g) The effective date of this section is February 1, 2020.

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

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37 TAC §221.43

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.43, concerning School-Based Law Enforcement Proficiency Certificate. Subsection (b) is amended to remove the size of the school district and change the number of days to complete the certificate pursuant to SB 11 (86R) and HB 2195 (86R). Subsection (c) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to SB 11 (86R) and HB 2195 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by requiring any school district with school district police or school resource officers to obtain a school-based law enforcement proficiency certificate.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:
(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does not require an increase or decrease in fees paid to the agency;
(5) the proposed rule creates a new regulation;
(6) the proposed rule expands, limits, or repeals an existing regulation;
(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and
(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.


No other code, article, or statute is affected by this proposal.

§221.43. School-Based Law Enforcement Proficiency Certificate.
   (a) To qualify for a school-based law enforcement proficiency certificate, an applicant must complete a course approved by the commission under Texas Occupations Code §1701.262.
   (b) School district peace officers and school resource officers providing law enforcement at a school district with an enrollment of 30,000 or more students must obtain a school-based law enforcement proficiency certificate within 180 (120) days of the officer's commission or placement in the district or campus of the district.
   (c) The effective date of this section is February 1, 2020.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
37 TAC §221.45

The Texas Commission on Law Enforcement (Commission) proposes new §221.45, concerning Jailer Firearms Certificate. This new rule establishes requirements to obtain a jailer firearms certificate under Texas Education Code §1707.2561.

This new rule is necessary to follow the requirements of HB 1552 and HB 3503.

John Beauchamp, General Counsel, has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

Mr. Beauchamp, General Counsel, has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by promoting the furtherance of law enforcement professionalism through education and training.

Mr. Beauchamp, General Counsel, has determined for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule does require an increase or decrease in fees paid to the agency;
(5) the proposed rule creates a new regulation;
(6) the proposed rule expands, limits, or repeals an existing regulation;
(7) the proposed rule increases or decreases the number of individuals subject to the rule’s applicability; and
(8) the proposed rule does not positively or adversely affect this state’s economy

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and Texas Occupations Code §1701.2561, Firearms Training for County Jailers.

No other code, article, or statute is affected by this proposal.

§221.45. Jailer Firearms Certificate.

(a) To qualify for a jailer firearms certificate, an applicant must complete a course as approved by the commission, under Texas Occupations Code 1701.2561, be currently appointed as a jailer, and make application to the commission.

(b) Jailers carrying a firearm as part of their assigned duties must first obtain the jailer firearms certificate before carrying the firearm and must maintain current firearms qualifications as shown in §218.9 of this title (relating to Continuing Firearms Proficiency Requirements).

(c) The effective date of this section is February 1, 2020.

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

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