

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 8. TEXAS JUDICIAL COUNCIL

#### CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes the repeal of §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.311, 173.401 and 173.402 concerning rules for grant administration. The Commission also proposes new §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.311, 173.401, and 173.402 concerning rules for grant administration. The rules establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense. The new sections would also implement Texas Government Code §79.037(a)(2)(E) to establish procedures for awarding and administering grants to nonprofit corporations to provide indigent defense services.

Mr. Geoffrey Burkhart, Executive Director, has determined that the proposed repeal of the rules will be for each of the first five-year period the rules are in effect the public benefit will be an improvement in the indigent defense services provided because of the grants awarded under the proposed rules.

Ms. Jennifer Henry, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

Ms. Henry has determined that there will be no material economic costs to persons who are required to comply with the new sections, nor do the proposed new sections have any anticipated adverse effect on small or micro-businesses.

Mr. Burkhart has determined that for each of the first five-year period the rules are in effect the public benefit will be an improvement in the indigent defense services provided because of the grants awarded under the proposed sections.

Mr. Burkhart has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Commission; (iv) the proposal does not affect fees paid to the Commission; (v) the proposal does not create a new regulation; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) there

is no increase or decrease in the number of individuals subject to the rule's applicability; and (viii) the proposal will not affect the state's economy.

Comments on the proposed repeal of rules and proposed new rules may be submitted to Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission, at [wshackelford@tidc.texas.gov](mailto:wshackelford@tidc.texas.gov) no later than 30 days from the date that the proposals are published in the *Texas Register*.

#### SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

##### 1 TAC §§173.101 - 173.109

The repeal of the rules is proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

§173.101. *Applicability.*

§173.102. *Definitions.*

§173.103. *Process for Submitting Applications for Grants and Other Funds.*

§173.104. *Grant Resolutions.*

§173.105. *Selection Process.*

§173.106. *Grant Funding Decisions.*

§173.107. *Improvement Grant Acceptance.*

§173.108. *Adoptions by Reference.*

§173.109. *Use of the Internet.*

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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Wesley Shackelford

Deputy Director

Texas Judicial Council

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For further information, please call: (512) 279-9208

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**1 TAC §§173.101 - 173.109**

The new rules are proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.101. Applicability.

(a) The Texas Legislature authorized the Texas Indigent Defense Commission (Commission) to direct the Comptroller to distribute Fair Defense Account funds and other appropriated funds, including grants, to counties and other eligible entities enumerated in section 79.037, Government Code, to provide indigent defense services. It further authorized the Commission to monitor grants and enforce compliance with grant terms. Subchapters A - D of this chapter apply to all indigent defense grants and other funds awarded to counties or other eligible entities by the Commission. Subchapter A of this chapter covers the general provisions for funding. Subchapter B of this chapter addresses funding types, eligibility, and general provisions of grant funding. Subchapter C of this chapter sets out the rules related to administering grants. Subchapter D of this chapter specifies rules regarding fiscal and program monitoring and audits. A commission-funded grantee must comply with the provisions of Subchapters A - D of this chapter in effect on the date the grant is awarded by the Commission, unless a subsequent effective date is specified by the Commission in an original grant award or a grant adjustment. Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

(b) Only counties in Texas and other eligible entities enumerated in section 79.037, Government Code, are eligible to receive grants or other funds from the Commission.

(c) The Commission may distribute grants in accordance with its policies and based on official submissions and reports provided by grantees. These funds must be used to support or improve indigent defense systems in Texas counties and are subject to all applicable conditions contained in this chapter.

§173.102. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless otherwise indicated:

(1) "Applicant" is a county or other eligible entity that has submitted a grant application, grant renewal documentation, or other request for funding from the Commission.

(2) "Application" is any formal request for funding submitted to the Commission.

(3) "Program income" means gross income earned by the grantee that is directly generated by a supported activity of the grant or earned as a result of the grant award during the period of performance. Program income includes, but is not limited to, fees for services performed.

(4) "Crime" means

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(5) "Defendant" means a person accused of a crime or a juvenile offense.

(6) "Improvement Grant" means discretionary funding awarded on a competitive basis to implement or expand new programs or processes in Texas counties designed to improve the quality of indigent defense services, promote and assist counties' compliance with the requirements of state law relating to indigent defense, or build the knowledge base regarding indigent defense through research, program evaluation, or pilot projects.

(7) "Extraordinary Disbursement Grant" means discretionary funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing an unusual financial hardship for the county.

(8) "Fair Defense Account" is an account in the general revenue fund that may be appropriated to the Commission for the purpose of implementing the Texas Fair Defense Act.

(9) "Fiscal Monitor" is an employee of the Commission who monitors counties' fiscal processes and records to ensure that financial data reported to the Commission is accurate and that grant funds are spent appropriately in accordance with the Texas Fair Defense Act, the Texas Grant Management Standards promulgated by the Comptroller, and other applicable rules and standards.

(10) "Formula Grant" means funding awarded to counties through a formula approved by the Commission.

(11) "Grant" is a funding award made by the Commission to a Texas county or other eligible entity.

(12) "Grantee" means a county or other eligible entity that is the recipient of a grant or other funds from the Commission.

(13) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(14) "Special condition" means a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the Commission-funded portion of a grant project.

(15) "Sustainability Grant" means a type of Improvement Grant that is discretionary funding awarded to assist counties in maintaining regional public defender programs.

(16) "Technical Support Grant" means a type of Improvement Grant awarded for special projects to improve the quality of indigent defense services through research, program evaluation, or pilot projects that raise the knowledge base about indigent defense, and may establish processes that can be generalized to similar situations in other counties.

(17) "Texas Indigent Defense Commission" (Commission) is the governmental entity established and governed by section 79.002 of the Texas Government Code.

(18) "TxGMS" means the Texas Grant Management Standards promulgated by the Office of the Comptroller.

§173.103. Process for Submitting Applications for Grants and Other Funds.

(a) The Commission shall publish notice of availability of grants and related policies on its website.

(b) Grant applications. The Commission will provide notice to each county judge of the availability of indigent defense grants. Applicants applying pursuant to a Request for Applications (RFA) must submit their applications according to the requirements provided in the RFA. The RFA will provide the following:

- (1) information regarding deadlines for the submission of applications;
- (2) the maximum and minimum amounts of funding available for a grant, if applicable;
- (3) the starting and ending dates for grants;
- (4) information regarding how applicants may access applications;
- (5) information regarding where and how applicants must submit applications;
- (6) submission and program requirements; and
- (7) the priorities for funding as established by the Commission.

§173.104. Grant Resolutions.

(a) Each grant application from a county must include a resolution from the county commissioners' court that contains the following:

- (1) authorization for the submission of the application to the Commission;
- (2) provision giving the authorized official the power to apply for, accept, decline, modify, or cancel the grant; and
- (3) written assurance that, in the event of loss or misuse of grant funds, the governing body will return all funds as required by the Commission.

(b) Each grant application from an eligible entity that is not a local government or state agency must submit a resolution adopted by the entity's governing board that contains the following:

- (1) authorization for the submission of the application to the Commission;
- (2) provision giving the authorized official the power to apply for, accept, decline, modify, or cancel the grant;
- (3) designation of the financial officer for the grant, who may not be the same person as the authorized official; and
- (4) written assurance that, in the event of loss or misuse of grant funds, the governing body will return all funds as required by the Commission.

§173.105. Selection Process.

(a) The Commission or its designees will review all applications and shall award grants from the Fair Defense Account or other funds appropriated by the Legislature.

(b) Upon reviewing an application, staff may require an applicant to submit, within a specified time, additional information to complete the review the application or to clarify or justify the application. Neither a request for additional information nor the issuance of a preliminary review report means that the Commission will fund an application.

(c) The Commission will inform applicants in writing or by electronic means of decisions through either a Statement of Grant Award or a notification of denial.

(d) If the Commission determines that an applicant has failed to submit the necessary information or has failed to comply with any

Commission rule or other relevant statute, rule, or requirement, the Commission may hold a grantee's funds until the grantee has satisfied the requirements of a special condition imposed by the Commission. The Commission may reject the application and deny the grant for failure to satisfy the requirements.

§173.106. Grant Funding Decisions.

(a) The Commission or its designees will make decisions on applications for funding through the use of objective tools and comparative analysis. The Commission or its designees will first determine whether the applicant is eligible for funds in accordance with §173.101 of this chapter (relating to Applicability) and §173.201 of this chapter (relating to Eligibility).

(b) All funding decisions rest completely within the discretionary authority of the Commission or its designees. The receipt of an application for funding does not obligate the Commission to award funding, and the Commission may make grant awards that partially fund budget items or programmatic elements in grant applications.

(c) Making a grant award based on an application does not obligate the Commission to give any subsequent applications priority consideration or to obligate the Commission to make any additional, supplemental, continuing, or other award.

(d) Commission decisions regarding funding are subject to the availability of funds.

§173.107. Improvement Grant Acceptance.

The Statement of Grant Award constitutes obligation of funds for use by the grantee in execution of the program or project covered by the award. Each applicant must accept or reject an improvement grant award within 30 days of the date upon which the Commission issues a Statement of Grant Award. The executive director of the Commission or his designee may alter this deadline upon request from the applicant. The authorized official designated under §173.301 of this chapter (relating to Grant Officials) must formally accept the grant in writing before the grantee may receive any improvement grant funds. Funds shall not be disbursed until acceptance of the grant by the grantee's authorized official.

§173.108. Adoptions by Reference.

(a) Grantees must comply with all applicable state statutes, rules, regulations, and guidelines.

(b) The Commission adopts by reference the rules, documents, and forms listed below that relate to the administration of grants:

(1) Texas Grant Management Standards (TxGMS) adopted pursuant to the Uniform Grant and Contract Management Act, Chapter 783, Texas Government Code.

(2) The Commission forms, including the statement of grant award, grant adjustment notice, grantee's progress report, financial expenditure report, and property inventory report.

§173.109. Use of the Internet.

The Commission may require submission of applications for grants, progress reports, financial reports, and other information via the internet. Completion and submission of a progress report or financial report via the internet meets the relevant requirements contained within this chapter for submitting reports in writing.

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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Texas Judicial Council  
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For further information, please call: (737) 279-9208



## SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

### 1 TAC §§173.201 - 173.205

The repeal of the rules is proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.201. *Eligibility.*

§173.202. *Use of Funds.*

§173.203. *Expenditure Categories.*

§173.204. *Program Income.*

§173.205. *Equipment.*

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### 1 TAC §§173.201 - 173.205

The new rules are proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.201. *Eligibility.*

(a) The Commission may award grants to counties and other eligible entities enumerated in section 79.037, Government Code, that

have complied with standards developed by the Commission and that have demonstrated commitment to compliance with the requirements of state law relating to indigent defense. Grants to non-county eligible entities will only be awarded for the purpose of supporting or improving indigent defense services in Texas counties.

(b) A county may not reduce the total amount of funds expended for indigent defense services in the county because of funds provided by the Commission.

(c) Entities eligible to apply for and receive grant funding from the Commission enumerated in section 79.037, Government Code that are not state agencies or local governments must provide the following items to the Commission in order to have a grant application considered for funding:

(1) The entity's articles of incorporation and bylaws;

(2) The list of officers and members of the entity's board of directors;

(3) Documentation of the organization's recognized non-profit status, as applicable, including determination letters from the United States Internal Revenue Service; and

(4) Most recent single audit report.

(d) Entities eligible to apply for and receive grant funding from the Commission enumerated in section 79.037, Government Code that are not local governments must agree to follow the Uniform Assurances and Standard Financial Management Conditions and grant rules as detailed in TxGMS, unless exceptions are approved in writing by the Commission.

§173.202. *Use of Funds.*

Grants provided under this chapter may be used by counties for:

(1) Attorney fees for indigent defendants accused of crimes or juvenile offenses;

(2) Expenses for licensed investigators, experts, forensic specialists, or mental health experts working for the defense under derivative attorney-client privilege to assist in the criminal defense of indigent defendants;

(3) Other direct litigation costs related to the criminal defense of indigent defendants; and

(4) Other approved expenses allowed by the Request for Applications necessary for the operation of a funded program.

§173.203. *Expenditure Categories.*

(a) Allowable expenditure categories and any necessary definitions will be provided to the applicant as part of the application process.

(b) Expenditures may be allocated to the grant in accordance with the Texas Grant Management Standards.

§173.204. *Program Income.*

(a) Rules governing the use of program income are included in the provisions of the TxGMS-adopted by reference in §173.108 of this chapter (relating to Adoptions by Reference).

(b) Grantees must use program income to supplement program costs or reduce program costs. Program income may only be used for allowable program costs. Grantees may not carry forward program income from one grant year to the next.

(c) Improvement grant reimbursements will be calculated based on net program expenditures after any program income has been applied.

§173.205. Equipment.

(a) Decisions by the Commission or its designees regarding requests to purchase equipment using Commission funds will be made based on the availability of funds, whether the grantee has demonstrated that the requested equipment is necessary and essential to the successful operation of the funded program, and whether the equipment is reasonable in cost.

(b) For grantees that receive a multi-year grant, the Commission will only fund equipment and other one-time start-up costs during the first year unless permission is granted in writing. Otherwise, equipment and other one-time costs will not factor in to the overall project costs after the first year of the grant.

(c) The Commission requires each grantee to maintain an inventory report of all equipment purchased with Commission funds. This report must comport with the final financial expenditure report. At least once each year during the award period, each grantee must complete a physical inventory of all property purchased with Commission funds and the grantee must reconcile the results with the purchased property records. For single-year awards, the inventory and reconciliation must be made at the end of the award period and submitted with the final report.

(d) Equipment purchased with Commission funds must be labeled and handled in accordance with the grantee's property management policies and procedures.

(e) Unless otherwise provided, equipment purchased is the property of the grantee after the end of the award period or termination of the operation of the funded program, whichever occurs last.

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 C. ADMINISTERING GRANTS

### 1 TAC §§173.301 - 173.311

The repeal of the rules is proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.301. Grant Officials.

§173.302. Obligating Funds.

§173.303. Retention of Records.

§173.304. Expenditure Reports.

§173.305. Provision of Funds.

§173.306. Discretionary Grant Adjustments.

§173.307. Remedies for Noncompliance.

§173.308. Term of Grant or Other Funds.

§173.309. Violations of Laws.

§173.310. Progress Reports for Discretionary Grants and Other Funds.

§173.311. Contract Monitoring.

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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### 1 TAC §§173.301 - 173.311

The new rules are proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.301. Grant Officials.

(a) Each grant must have the following designated to serve as grant officials:

(1) Financial officer. For grants to counties, this person must be the county auditor or county treasurer if the county does not have a county auditor. The Financial Officer should have knowledge of and access to the entity's financial records and processes. For grants to other eligible entities, the financial officer must be designated by the applicant in the grant resolution provided pursuant to §173.104 of this chapter (relating to Grant Resolutions).

(2) Authorized official. This person must be authorized by the county commissioners court or the board of directors of the eligible entity to apply for, accept, decline, modify, or cancel the grant for the applicant. A county judge or a designee authorized by the governing body in its resolution may serve as the authorized official. For grants to non-county eligible entities, the authorized official will be designated by the applicant and authorized by the applicant's governing body to bind the organization to third-party contracts.

(b) The Commission may require an applicant to designate a program director. This person must be the officer or employee responsible for program operation and who will serve as the point-of-contact regarding the program's day-to-day operations.

(c) The program director and the authorized official may be the same person. The financial officer may not serve as the program director or the authorized official.

(d) A grantee shall notify the Commission within 20 calendar days of any change in the:

(1) Designated project director, financial officer, or authorized official; or

(2) Mailing address, physical address, email address, fax number, or telephone number of each grant official.

#### §173.302. Obligating Funds.

The grantee may not obligate grant funds before the beginning or after the end of the grant period specified in an original grant award or a subsequent grant adjustment.

#### §173.303. Retention of Records.

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final expenditure report. Records retention is required for the purposes of state examination and audit. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the resolution of all litigation, claims, or audit findings.

#### §173.304. Expenditure Reports.

(a) Recipients of grants must submit program expenditure reports to the Commission in addition to the annual expenditure report required for all counties under Texas Government Code section 79.036(e).

(b) The Commission will provide the appropriate forms and instructions for expenditure reports and deadlines for their submission. The financial officer shall be responsible for submitting the expenditure reports.

(c) Grantees must ensure that actual expenditures are comprehensively documented. Documentation may include, but is not limited to, ledgers, purchase orders, travel records, time sheets, earnings statements, bank statements, credit card statements, other payroll documentation, invoices, receipts, contracts, mileage records or maps, and other documentation that verifies the expenditure amount, allowability, and appropriateness to the funded program. Expenditure documentation must be provided to the Commission upon request.

#### §173.305. Provision of Funds.

(a) After a grant has been awarded, and if there are no deficiencies or special conditions that result in withholding of grant funds according to §173.307 or §173.401, the Commission may disburse funds to the grantee. Funds will be disbursed to the grantee quarterly unless specific permission for an alternative disbursement schedule is granted in writing from the executive director.

(b) Disbursement of funds is always subject to the availability of funds.

(c) Improvement grant funds will be paid on a reimbursement basis only after the expenditure report has been submitted. Funds must be expended, not merely obligated, before being included in the grant

program expenditure report. Requests for exceptions to this section must be in writing and signed by the authorized official and may be approved by the executive director for good cause.

#### §173.306. Improvement Grant Adjustments.

(a) The authorized official must sign all requests for grant adjustments.

(b) Budget Adjustments. Grant adjustments consisting of reallocations of funds among or within budget categories in excess of \$10,000 or ten percent of the original grant award, whichever is less, are considered budget adjustments, and are allowable only with prior approval of the executive director of the Commission. Grantees must notify the Commission in writing of reallocations of funds among or within budget categories below this threshold. If a reallocation of funds among or within budget categories results in the cumulative amount of budget changes within the same fiscal year reaching \$10,000 or 10% of the original grant award, whichever is less, the adjustment is allowable only with the prior approval of the executive director of the Commission.

(c) Non-Budget Grant Adjustments. The following rules apply to other grant adjustments:

(1) Requests to revise the scope, target, or staffing of the project, or substantively alter project activities require advance written approval from the Commission.

(2) The grantee shall notify the Commission in writing of any change in the designated program director, financial officer, or authorized official within ten days following the change.

#### §173.307. Remedies for Noncompliance.

(a) If a grantee fails to comply with any term or condition of a grant, rules, or any applicable statutes, the Commission may take one or more of the following actions:

(1) disallow all or part of the cost of the activity or action that is not in compliance and seek a return of the funds;

(2) impose administrative sanctions, other than fines, on the grantee;

(3) temporarily withhold grant payments pending correction of the deficiency by the grantee;

(4) withhold future grant payments from the program or grantee; or

(5) terminate the grant in whole or in part.

(b) The Commission shall provide reasonable notice prior to imposing a remedy under subsection (a) of this section. If a grantee disputes the finding, the authorized official may request that one or more representatives of the grantee appear before the Commission. If the Commission receives such a request, it will consider the grantee's presentation at the Commission's next scheduled meeting. The administrative determination rendered by the Commission is final.

#### §173.308. Term of Grant.

(a) The term of a grant shall be specified in the Statement of Grant Award or other funding document.

(b) If a grantee wishes to terminate a grant in whole or in part before the end of the award period, the grantee must notify the Commission in writing. The Commission or its designee will arrange with the grantee an early termination of the award, which may include transfer or disposal of property and return of unused funds.

(c) The Commission may terminate any grant, in whole or in part, when:

(1) the grantee and the executive director of the Commission agree to do so;

(2) the grantee fails to comply with any term, condition, statute, rule, regulation, or guideline;

(3) indigent defense funds are no longer available;

(4) operational conditions exist that make it unlikely that grant or program objectives will be accomplished; or

(5) Grantee has acted in bad faith.

(d) A grantee may submit a written request for an extension of the funding period. The Commission must receive requests for funding extensions at least 30 days prior to the end of the funding period. The executive director of the Commission may approve extensions of the funding period for up to six months. Requests to extend the funding period beyond six months of the original term must be approved by the Commission.

§173.309. Violations of Laws.

If the grantee has a reasonable belief that a criminal violation may have occurred in connection with Fair Defense Account funds, including the misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with the requirements of a grant, the grantee must immediately notify the Commission in writing of the suspected violation or irregularity. The grantee may also notify the local prosecutor's office of any possible criminal violations. Grantees whose programs or personnel become involved in any litigation arising from the grant, whether civil or criminal, must immediately notify the Commission and forward a copy of any demand notices, lawsuits, or indictments to the Commission.

§173.310. Progress Reports for Improvement Grants.

Each grantee must submit reports regarding performance and progress towards goals and objectives in accordance with the instructions provided by the Commission or its designee. To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

§173.311. Contract Monitoring.

Grantees that use grant funds to contract for services must develop and include in the contract provisions to monitor each contract that is for more than \$10,000 per year. These provisions must include specific actions to be taken if the grantee discovers that the contractor's performance does not meet the operational or performance terms of the contract. In the case of contracts for public defender offices and managed assigned counsel programs, these provisions must include a review of utilization and activity, reporting of financial data to evaluate the contractor's performance within the budget required by statute for such programs. Commission staff must review each contract at least once every two years and notify the grantee if it is not sufficient.

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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For further information, please call: (737) 279-9208

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SUBCHAPTER D. MONITORING AND AUDITS

**1 TAC §173.401. §173.402**

The repeal of the rules is proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed repeal of the rules.

§173.401. Fiscal Monitoring.

§173.402. Audits Not Performed by the Task Force on Indigent Defense.

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 September 19, 2022.

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Wesley Shackelford

Deputy Director

Texas Judicial Council

Earliest possible date of adoption: October 30, 2022

For further information, please call: (737) 279-9208

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**1 TAC §173.401, §173.402**

The new rules are proposed under the Texas Government Code §79.037. The Commission is authorized to distribute funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds. No other statutes, articles, or codes are affected by the proposed new rules.

§173.401. Fiscal Monitoring.

(a) The Commission or its designees will monitor the activities of grantees as necessary to ensure that Commission grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. The Commission or its designees may implement monitoring through on-site review at the grantee location or through a desk review based on grantee reports. In addition, the Commission or its designees may require grantees to submit relevant information to the Commission to support any monitoring review. The Commission may contract with an outside provider to conduct the monitoring.

(c) Grantees must make available to the Commission or its designees all requested records relevant to a monitoring review. The Commission or its designees may make unannounced monitoring visits at any time. Failure to provide adequate documentation upon request may result in disallowed costs or other remedies for noncompliance as detailed under §173.307 of this chapter (relating to Remedies for Non-compliance).

(d) After a monitoring review, the fiscal monitor shall issue a report to the authorized official and financial officer as soon as is practicable, but no later than 90 days following the final submission of requested county financial data, unless a documented exception is provided by the executive director. The report shall contain each finding of noncompliance.

(e) Within 60 days of the date the report is issued, the authorized official or financial officer shall respond in writing to each finding of non-compliance and shall describe the proposed corrective action to be taken by the grantee. The grantee may request the executive director to grant an extension of up to 60 days.

(f) The corrective action plan will include the:

(1) titles of the persons responsible for implementing the corrective action plan;

(2) corrective action to be taken; and

(3) anticipated completion date.

(g) If the grantee believes corrective action is not required for a noted deficiency, the response will include an explanation, specific reasons, and supporting documentation.

(h) The Commission or its designees will approve the corrective action plan and may require modifications prior to approval. The grantee's replies and the approved corrective action plan, if any, will become part of the final report.

(i) The grantee will correct deficiencies identified in the final report within the time frame specified in the corrective action plan.

(j) The fiscal monitor shall conduct an additional on-site visit or remote follow-up review to grantees where the fiscal monitor determines that the report included significant noncompliance findings. The follow-up visit or desk review shall occur within 12 months following receipt of a county's response to the report. The fiscal monitor shall review a grantee's implementation of corrective actions and shall report to the grantee and Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the fiscal monitor, the authorized director or financial officer shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the grantee. The grantee may request the director to grant an extension of up to 30 days.

(k) If a grantee fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that formula grant payments will be automatically withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. The Commission may also authorize withholding of improvement grant funds. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Grants and Reporting Committee approves the release of the funds.

(l) If a grantee fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this chapter.

§173.402. Audits Not Performed by the Texas Indigent Defense Commission.

(a) Grantees must submit to the Commission copies of the results of any single audit conducted in accordance with the single audit standards in the Texas Grant Management Standards. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to the Commission within 30 days after grantee receipt of the audit results or nine months after the end of the audit period, whichever is earlier.

(b) All other audits performed by auditors independent of the Commission must be maintained at the grantee's administrative offices pursuant to §173.303 of this chapter (relating to Retention of Records) and be made available upon request by the Commission or its representatives. Grantees must notify the Commission of any audit results that may adversely impact the Commission grant funds.

(c) Nothing in this section should be construed so as to require a special or program-specific audit of a grantee's Indigent Defense grant program.

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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Texas Judicial Council

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For further information, please call: (737) 279-9208



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code §§7.114, §7.115, 7.121 - 7.130, 7.132 - 7.136, 7.141 - 7.152, 7.154, 7.156, 7.161, 7.162, 7.172 - 7.178, 7.191 - 7.193, 7.196, 7.201 - 7.205; and the repeal of §7.163 and §7.195.

The Department identified the need for the proposed amendments and repeals during its rule review of 4 Texas Administrative Code, Chapter 7, Subchapter H, conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §7.114 correct a reference to Chapter 1951 of the Texas Occupations Code; add definitions for terms appearing through his subchapter to include "CEU," "effective date," and "wood destroying insect;" remove definitions for terms that do not appear in this subchapter to include "household," "obnoxious and undesirable animals or plants," and "work location;" remove unnecessary definitions for the Department and the Texas Occupations Code; and clarify the definition of "physically present."



The proposed amendments to §7.115 revise the Structural Pest Control Service Penalty Matrix (Penalty Matrix) by updating references to the Texas Administrative Code tied to violations, incorporating new violations to account for non-compliant conduct outlined in Subchapter H, updating a reference to a Structural Pest Control Service's SPCS/D-4 form, add language clarifying when failure to register an employee is triggered, and make grammatical changes to improve the Penalty Matrix's readability.

The proposed amendments to §7.121 clarify operational requirements for business licensees and types of work technicians and certified commercial applicators can perform, and update references to certified commercial and noncommercial applicators.

The proposed amendment to §7.122 adds language to reflect consequences for failure to comply with the rule.

The proposed amendments to §7.123 increase the minimum amounts of insurance coverage required for licensees.

The proposed amendments to §7.124 clarify what structural pest control activities fall in the Commodities Fumigation category.

The proposed amendment to §7.125 adds "Texas" before "Occupations Code."

The proposed amendments to §7.126 correct a cross reference to §7.125, remove references to the Structural Pest Control Board, and make editorial changes.

The proposed amendments to §7.127 update references to certified commercial and noncommercial applicators, add "Texas" before "Occupations Code," and make editorial changes.

The proposed amendments to §7.128 make editorial changes.

The proposed amendments to §7.129 update references to certified commercial and noncommercial applicators.

The proposed amendments to §7.130 make editorial changes.

The proposed amendments to §7.132 update references to certified commercial and noncommercial applicators, clarify responsibilities related to the apprentice registration process, provide that training completed prior to hiring does not count toward apprentice training requirements, add "license" before "category," and add recording requirements for apprentice training records to account for training provided by third parties.

The proposed amendments to §7.133 outline training prerequisites for technicians to add structural pest control categories, update language to conform with current technician training requirements, and make editorial and grammatical changes to improve the rule's readability.

The proposed amendments to §7.134 change "Occupations Code" to "SPCA" in order to use a defined term, clarify circumstances under which continuing education units may not be earned, and make editorial changes.

The proposed amendments to §7.135 clarify course approval requirements for continuing education programs, establish the circumstances under which a live webinar may be credited as an in-person course, and establish course cancellation and modification requirements.

The proposed amendments to §7.136 establish course cancellation and modification requirements for technician/noncommercial certified applicator training course programs.

The proposed amendments to §7.141 clarify that registration cards may not be altered and make editorial changes.

The proposed amendments to §7.142 add information that notices of employee termination must contain.

The proposed amendment to §7.143 clarifies who is responsible for recording apprentice training.

The proposed amendments to §7.144 changes "EPA" to the "Environmental Protection Agency (EPA)," require the addition of EPA registration numbers for products, if they exist, on pest control use records, and exclude unit measurements of areas receiving bait treatment on pest control use records.

The proposed amendments to §7.147 adds the rule headings in a cross reference to rules §§7.146 - 7.148.

The proposed amendments to §7.148 make editorial changes.

The proposed amendment to §7.150 clarifies it is a violation to use pesticides in a manner inconsistent with any permit or emergency exemption issued by the department, in addition to the Environmental Protection Agency, and changes "EPA" to "the Environmental Protection Agency".

The proposed amendment to §7.154 updates Department contact information.

The proposed amendments to §7.156 include language to align the rule with current Department procedures for conducting investigations and inspections.

The proposed amendments to §7.161 change "Occupations Code, Chapter 1951" to "SPCA" in order to use a defined term, add a violation for advertising without a valid business license, add a violation for failing to comply with §7.136, change the cross reference to the rule on licensing persons with criminal backgrounds, update the heading of §7.174 in a cross reference to that rule, change the heading in a cross reference to Division 7, and make editorial changes.

The proposed amendments to §7.162 make editorial changes.

The repeal of §7.163 is proposed because civil, criminal, and administrative penalties for violations of Chapter 1951 of the Texas Occupations Code and the related rules of this subchapter are provided in Tex. Occ. Code §1951.602, Tex. Occ. Code §1951.603, and Tex. Agric. Code §12.020, respectively; consequently, the rule is unnecessary.

The proposed amendments to §7.172 change the rule's heading to create consistency with terminology in Department forms, change "EPA" to the "Environmental Protection Agency," update the heading in a cross reference to §7.174 to account for a proposed amendment to the rule's heading, and change "Termite" to "Wood Destroying Insect."

The proposed amendments to §7.173 change "EPA" to the "Environmental Protection Agency," and change "Termite" to "Wood Destroying Insect."

The proposed amendments to §7.174 change the rule's heading to create consistency with terminology in Department forms and make editorial changes.

The proposed amendments to §7.175 update a reference to a structural pest control work category and make editorial changes.

The proposed amendments to §7.176 provide Department-prescribed forms pertaining to wood destroying insect inspections may not be altered, update a reference to the Department of Veterans Affairs, and clarify references to structural pest control business licensees.

The proposed amendments to §7.177 clarify who is responsible for meeting the requirements of the rule and make editorial changes.

The proposed amendments to §7.178 clarify licensing requirements for those engaging in structural fumigation, update a cross reference to §7.174 to account for a proposed amendment to the rule's heading, and make editorial changes.

The proposed amendments to §§7.191-7.193 make editorial changes.

The repeal to §7.195 is proposed because the rule duplicates provisions in Tex. Occ. Code, §1951.102, and §1951.103.

The proposed amendments to §7.196 clarify when Structural Pest Control Advisory Committee meetings are held, update quorum requirements and the number of Committee members, remove redundant language that appears in §7.192, and correct a reference to Robert's Rules of Order.

The proposed amendments to §7.201 remove unnecessary language from the rule's heading, update the rule heading in a cross reference to §7.114, and add a deadline for notifying the Department of the removal and replacement of IPM coordinators.

The proposed amendments to §7.202 change the rule's heading to reflect its education requirements, remove language contained in §7.201, and make editorial changes.

The proposed amendments to §7.203 update a reference to certified commercial and noncommercial applicators to make it consistent with how the terms are used in this chapter and Chapter 1951 of the Texas Occupations Code and add language to account for residential properties located on school district grounds.

The proposed amendments to §7.204 add language to account for residential properties located on school district grounds and remove language from pesticide category definitions to clarify their meanings.

Additionally, the term "Department" is changed to "department" throughout the rules, as the term "department" is mainly used throughout Title 4, Part 1.

Mr. Michael Kelly, Director for Consumer Service Protection, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the proposal.

Mr. Kelly has also determined that for each year of the first five years the proposal is in effect, the public benefit will be increased consumer protection through improved readability and clarification of the rules and increased insurance coverage requirements for structural pest control businesses, as well as increased educational requirements for pesticide applicators in non-agricultural settings.

The Department notes that the proposed amendments to the Penalty Matrix in §7.115 follow requested feedback from the Structural Pest Control Advisory Committee (Committee). The Department further notes that no changes to penalty amounts are proposed for those violations with proposed, updated references. As reflected in the Penalty Matrix, proposed penalty amounts for those proposed new violations are consistent with the amounts corresponding to those violations the Committee has determined to be of similar significance.

Mr. Kelly has determined the increase in insurance coverage requirements outlined in the proposed amendments to §7.123

may lead to an increase in insurance premiums for licensees. This proposed increase was recommended by the Structural Pest Control Advisory Committee. This recommendation followed consideration during several of the Committee's quarterly meetings including public input. The purpose of the proposed increase is to bring insurance coverage minimums in line with present-day liabilities experienced by the structural pest control industry. Likewise, the Committee determined that this increase would be to an amount consistent with the most common policy coverage for the industry currently. A committee member who is a commercial property and casualty insurance agent specializing in pest control insurance has advised that the difference between current insurance premiums and those resulting from this increase in coverage would be negligible. The committee member further advised that a structural pest control company's premiums are commensurate with the amount of its sales. For all other rules, no economic costs to persons required to comply with them are anticipated.

Mr. Kelly has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposal is in effect:

- (1) no government programs will be created or eliminated;
- (2) no employee positions will be created or eliminated;
- (3) there will be no increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) no new regulations will be created by the proposal;
- (6) there will be a repeal of existing regulations;
- (7) there will be no increase or decrease in the number of individuals subject to the rules; and
- (8) there will be no positive or adverse effect on the State's economy.

The Department has determined the proposal will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [morris.karam@texasagriculture.gov](mailto:morris.karam@texasagriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

### DIVISION 1. GENERAL PROVISIONS

#### 4 TAC §7.114, §7.115

The amendments are proposed under the Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control, noncommercial applicators, and technicians and Section 12.020 of the Texas Agriculture Code, which allows the Department to prescribe and assess administrative penalties to enforce structural pest control laws and regulations.

The codes affected by the proposal are Texas Agriculture Code, Chapter 12, and Texas Occupations Code, Chapter 1951.

§7.114. Definitions [Definition of Terms].

In addition to the definitions set out in the Texas Structural Pest Control Act, Chapter 1951, Texas Occupations Code, the following words, names, and terms shall have the below meanings for this subchapter, unless the context clearly indicates otherwise.

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

(6) CEU--Continuing education unit.

(7) [(6)] Chairman--An individual elected by members of the Structural Pest Control Advisory Committee to preside over meetings.

(8) [(7)] Committee--The Structural Pest Control Advisory Committee. An eleven-member committee appointed by the Commissioner, whose responsibility is to gather information and advise the Commissioner and the department [Department] on the business of structural pest control.

(9) [(8)] Course provider--The person, company, or organization that compiles, organizes, writes and/or produces category specific training or continuing education courses.

[(9) Department--The Texas Department of Agriculture.]

(10) Effective Date--Beginning date an employee (e.g. Apprentice) is registered to a business licensee [Household--Residential structure occupied or intended for occupancy by a single individual, cohabitating individuals, or a family].

(11) (No change.)

(12) Infest--To exist in, on, around or invade a structure in a manner that may limit the use or enjoyment of, or cause harm or damage to: households, railroad cars, ships, docks, trucks, airplanes, or other structures, or its contents, or its inhabitants, including any humans or pets; and pests, unwanted plants, or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street.

(13) (No change.)

[(14) Obnoxious and undesirable animals or plants--Animals or weeds as defined in §1951.003 of the Occupations Code, that limit the use or enjoyment or cause harm or damage of any type to people, pets, structures, landscapes, or the environment. Animals excluded from this definition are members of the Order Primates, hoofed mammals, members of Family Ursidae, members of the Genus Felis, members of the Genus Canis, domestic livestock, ratites, gallinaeous birds and alligators.]

[(15) Occupations Code--Unless otherwise specified, all references shall be to the Texas Occupations Code, Chapter 1951.]

(14) [(16)] Other noncommercial entity--Any workplace with three (3) or more full-time employees.

(15) [(17)] Physically present--Face-to-face contact at a work location where supervisor and supervisee are physically in the same space. Face-to-face does not include video or audio calls using electronic devices.

(16) [(18)] Self-study course--A self-study, online or electronic course taken for the purpose of continuing education or training.

(17) [(19)] SPCA--Texas Structural Pest Control Act, Texas Occupations Code, Chapter 1951.

(18) [(20)] TPCL--Texas Pest Control License.

(19) [(21)] Vice-Chairman--An individual elected by members of the Structural Pest Control Advisory Committee to preside over meetings in the absence of the Chairman.

(20) [(22)] WDIR--Texas Official Wood Destroying Insect Report.

(21) Wood Destroying Insect (WDI)--insects that consume wood for food or use wood to propagate offspring. Examples of wood destroying insects include termites, wood-boring beetles, and carpenter bees.

[(23) Work location--Anywhere structural pest control services are performed or where a meeting is being held for the purpose of supervision or training (job site/classroom).]

(22) [(24)] Workplace--Any non-residence structure with three (3) or more full-time paid employees that is treated by a licensed business or a certified noncommercial applicator.

§7.115. Structural Pest Control Enforcement.

The department [Department] has established the following schedule of disciplinary sanctions for violations of this subchapter: [Subchapter H, related to Structural Pest Control Service.]

Figure: 4 TAC §7.115

[Figure: 4 TAC §7.115]

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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TRD-202203764

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



## DIVISION 2. LICENSES

### 4 TAC §§7.121 - 7.130, 7.132 - 7.136

The amendments are proposed under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control; §1951.201, which makes the Department the sole authority to license those engaged in the business of structural pest control and to set related fees; §1951.203, which requires the Department to develop standards and criteria to issue structural pest control licenses; §1951.312, which allows the Department to set amounts of insurance coverage for licensees, for different classifications of operations, and for certified noncommercial applicators and technicians; §1951.315, which requires the Department to administer and set requirements for a continuing education program for structural pest control licensees; and §1951.351, which requires the Department to develop or approve a training program for licensed technicians and applicants to become technicians.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

§7.121. Types and Requirements of Licenses.

(a) Business Licensee- Any person engaged in structural pest control for compensation must secure a business license in the business's operating name from the department [Department] for each business location, including branch offices. Each business licensee [license holder] must designate a responsible certified commercial applicator for each business location who is not also serving as a responsible certified commercial applicator for any other business licensee or any other business location. The business license may reflect only those categories in which at least one (1) certified applicator is actively licensed. A business licensee may not operate at any time without a designated responsible certified commercial applicator and [designated or] current general pest control liability insurance.

(b) Responsible Certified Commercial Applicator- A certified commercial applicator who has been designated and notified by the business licensee [license holder] to be responsible for training and supervision of all pest control operations of the business. The person may be employed by other business location(s) as a certified commercial applicator, but may only be the designated responsible certified commercial applicator for [(+)] one (1) business license location.

(c) Certified Commercial Applicator- A person licensed in at least one (1) category as a certified commercial applicator who can perform pest control services, identifications, and control measures without direct supervision but under general supervision of the responsible certified commercial applicator. A certified commercial applicator must hold a separate license for every business for which the certified commercial applicator is employed but is not required to hold a separate license for branch offices of an employer. A certified commercial applicator may only provide services in categories in which the certified commercial applicator is certified.

(d) Certified Noncommercial Applicator- An employee of a governmental entity, apartment building, day care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution, and other noncommercial entity. A person licensed in at least one (1) category as a [noncommercial] certified noncommercial applicator may perform pest control services, identifications, and control measures without direct supervision. A certified noncommercial applicator must be licensed for every business entity for which the certified noncommercial applicator is employed but is not required to hold a separate license for branch offices of an employer.

(e) (No change.)

(f) Technician- A person licensed in at least one (1) category who performs pest control services under the direct supervision of a certified commercial or noncommercial [certified] applicator. A technician must be licensed for every business or noncommercial entity for which the technician is employed, but is not required to hold a separate license for branch offices of the technician's [their] employer. A technician may only provide services in categories in which the technician is certified.

(g) Apprentice- A sales or service employee who is registered by a structural pest control business or noncommercial entity to complete the required training for a technician license and has not yet passed a technician exam. An apprentice may work only for the business or noncommercial entity for which the apprentice is [they are] registered.

§7.122. *Applications for Licensing, Registration, Certification, and Approval.*

(a) The application for a business license, a certified applicator license, technician license, or for registration as an apprentice under this chapter [Chapter] must be complete and submitted on a form prescribed by the department [Department]. Failure to provide complete

and accurate information may result in a change of effective date of employment as documented by the department.

(b) A license application may be denied if a same or similar license issued to the applicant by this or another state or federal government has been revoked, suspended, probated or denied during the preceding five (5)-year five-year period for any reason. For the purpose of this section, a license is similar if the license was issued for the practice of an occupation in which professional services are normally provided in-person.

(c) (No change.)

§7.123. *Insurance Requirements.*

(a) Each business license applicant and certified noncommercial applicator license applicant must submit a certificate of insurance with proof of coverage on the form provided by the department [Department] in an amount not less than \$500,000 [~~\$200,000~~] for bodily injury and property damage coverage, with a minimum total annual aggregate of \$1,000,000 [~~\$300,000~~] for all occurrences. The insurance policy must insure applicant for damage to persons and/or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under applicant's care, custody, or control. No new business license or certified noncommercial applicator license will be issued until insurance requirements are met. Policies must contain a cancellation provision for notification to the department [Department] not less than thirty (30) days prior to cancellation.

(b) A licensee who operates as a wood treater who treats wood on commercial property owned by the licensee must submit a general liability insurance policy or certificate of coverage in an amount not less than \$500,000 [~~\$200,000~~] for bodily injury and property damage coverage, with a minimum total annual aggregate of \$1,000,000 [~~\$300,000~~] for all occurrences. No license will be issued until this insurance requirement is met. Policies must contain a cancellation provision for notification to the department [Department] not less than thirty (30) days prior to cancellation.

(c) If payment of claims results in reducing the total aggregate of coverage below \$1,000,000 [~~\$300,000~~], the insurance carrier must notify the department [Department] and the licensee within ten (10) business days. The licensee must obtain additional coverage to meet the minimum requirements.

(d) - (g) (No change.)

§7.124. *Structural License Categories.*

Pest control licenses may be issued in one or more of the following categories.

(1) Pest Control--The inspection or control of pests in and around structures or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself. Examples of such pests are cockroaches, silverfish, ants, fleas, ticks, flies, mosquitoes, rats, mice, skunks, raccoons, and opossums [; etc].

(2) (No change.)

(3) Lawn and Ornamental--The inspection or control of pests or diseases of trees, shrubs, or other plantings in a park or in and around structures, business establishments, industrial parks, institutional buildings, or streets.

(4) - (5) (No change.)

(6) Commodity Fumigation--The inspection or control of pests through fumigation of processed commodities, raw agricultural commodities, or structures normally used to contain commodities. This

category does not include the fumigation of agricultural equipment or any agricultural commodity located on the farm [~~raw agricultural commodities~~].

(7) (No change.)

§7.125. *Examinations.*

(a) Examination required. Each individual not previously qualified by examination in the category or categories for which the license is requested must pass an appropriate examination. An application must be submitted to the department [~~Department~~] specifying the examination category desired and pay the fee for each exam requested prior to the scheduled examination session.

(b) Examination categories. Examinations will be administered, maintained, and evaluated on a routine basis as determined by department [~~Department~~] examination policy in the following categories:

(1) - (7) (No change.)

(c) Military requests to expedite examinations. Military members, military veterans, and military spouses, as defined in Texas Occupations Code, Chapter 55, may request their application for examination to be expedited by noting on their application to the department [~~Department~~]. To qualify, all other licensing requirements must also be met.

(d) Examinations standards and requirements.

(1) (No change.)

(2) All examination fees are to be paid as prescribed by the department [~~Department~~].

(3) (No change.)

(4) All examinations shall be maintained and administered by the department [~~Department~~] or its designee.

(5) - (11) (No change.)

(e) Cheating is Prohibited.

(1) (No change.)

(2) 'Unauthorized assistance' means any verbal, written, or electronic communication during the examination made for the purpose of receiving or providing answers to examination questions.

(3) Upon a final determination that an examinee has cheated, any current license issued by the department [~~Department~~] is subject to suspension or revocation.

§7.126. *Licensing Qualification Requirements.*

(a) Certified commercial applicator. In addition to passing the appropriate category examination, in order to be eligible to obtain a certified commercial applicator license, each applicant must pass the general standards examination administered by the department [~~Department~~]. To be eligible to be licensed in any of the categories in §7.125(b) of this chapter (related to Examinations) [~~title, related to examinations~~], the applicant must also meet one of the following requirements:

(1) (No change.)

(2) Furnish proof of previous verifiable employment experience in the pest control industry, including out-of-state experience in pest control, for [~~of~~] at least twelve (12) months out of the past twenty-four (24) months. The proof of experience must be provided by the applicant in the form of a letter from the appropriate licensing entity stating the type of license held and how long the applicant has held the license;

(3) Have a degree or certificate in an area of the biological sciences related to pest control from an accredited two (2) or four (4)-year [~~(4)~~] college or university;

(4) Have previously held a certified applicator license issued by the department [~~Structural Pest Control Board or the Department~~] that can be verified by the department [~~Department~~]; or

(5) Qualify under the hardship clause outlined in §7.129 of this chapter (relating to Loss of Responsible Certified Applicator or Business License Holder) [~~title, relating to Loss of Responsible Certified Applicator or Business License Holder~~].

(b) Certified non-commercial applicator. In addition to passing the appropriate category examination and the general standards examination, in order to be eligible to obtain a certified noncommercial applicator's license, the applicant must meet one of the following requirements:

(1) (No change.)

(2) Furnish proof of previous verifiable employment experience in the pest control industry, including out-of-state experience in pest control, for [~~of~~] at least twelve (12) months out of the past twenty-four (24) months. The proof of experience must be provided by the applicant in the form of a letter from the appropriate licensing entity stating the type of license held and how long the applicant has held the license;

(3) Have a degree or certificate in an area of the biological sciences, related to pest control, from an accredited two (2) or four (4)-year [~~(4)~~] college or university;

(4) Complete a department-approved [~~Department approved~~] minimum six (6) hour certified noncommercial/technician training course; or

(5) Have previously held a certified applicator license issued by the department [~~Structural Pest Control Board or the Department~~] that can be verified by the department [~~Department~~].

(c) Commercial or noncommercial technician. In addition to passing the appropriate category examination, in order to be eligible to obtain a commercial or noncommercial technician license, the applicant must be registered with the department [~~Department~~], complete all required apprentice training specified in §7.132 of this chapter (relating to Requirements for Apprentice Registration) [~~title, relating to Requirements for Apprentice Registration~~], and attend a technician training course at least one (1) time prior to taking the examination. The examination may be taken as many times as necessary in the twelve (12) month period the employee holds a current apprentice registration card.

§7.127. *License Expiration and Renewal.*

(a) (No change.)

(b) Commercial technician and certified commercial applicator licenses registered with a commercial business, expire annually on the same date the commercial business license expires.

(c) (No change.)

(d) Noncommercial technician and certified noncommercial applicator licenses registered with a noncommercial entity expire annually on the same date the noncommercial business license expires.

(e) - (f) (No change.)

(g) Licenses must be renewed by submitting a renewal application to the department [~~Department~~], paying the required fee, and meeting any additional requirements under §7.123 of this chapter (relating to Insurance Requirements) [~~title, relating to Insuranc~~].

ments, and subsection (k) of this section, prior to the license expiration date.

(h) Military members, military veterans, and military spouses, as defined in Texas Occupations Code, Chapter 55, may request their application for renewal to be expedited by noting on their application to the department [Department]. To qualify, all other licensing requirements must also be met.

(i) A renewal application submitted after the license expiration date is subject to late fees. A renewal application is not considered to be submitted unless it is complete and correct, submitted with the correct fees, and satisfies all additional requirements determined by the department [Department]. Applicants who apply for a renewal license more than 365 days after the license expiration date will be required to be re-examined to obtain a license.

(j) Licenses issued by the department [Department] may not be transferred, borrowed, rented, leased, or loaned.

(k) Whenever a licensee changes their mailing address, business location address, or telephone number, the licensee must notify the department [Department] in a written or electronic manner within ten (10) business days of the effective date of the change. A license may be reprinted upon request and shall be issued to the licensee only.

(l) In determining whether additional testing or training must be required of a current licensee before renewal [of their license], the department [Department] may consider changes in regulations, technology, pesticide related issues, and the performance or competency of the individual licensee [individual licensees]. If general re-training or re-testing is required for all applicators in a category or subcategory, the department [Department] will publish notice at least six (6) months in advance of the license renewal date. If individual re-training or re-testing is required as a result of the licensee's performance or inability to perform, the department [Department] shall give notification and set a time and place of re-training.

(m) All certified applicators must meet their continuing education requirements in each category for which they hold a license during the prior calendar year, pursuant to §7.134 of this chapter (relating to Continuing Education Requirements for Certified Applicators) [title, relating to Continuing Education Requirements for Certified Applicators]. Failure to do so shall prevent the renewal of the license.

(n) All technicians must meet their verifiable training requirements during the prior calendar year, pursuant to §7.133 of this chapter (relating to Technician License Requirements) [title, relating to Technician License Requirements]. Failure to do so shall prevent the renewal of the license.

§7.128. Fees.

(a) Applicants and licensees will be charged the following fees:

- (1) \$300 for a business license;
- (2) \$125 for a certified applicators license;
- (3) \$125 for a technician license;
- (4) \$64 per exam in each category;
- (5) a renewal fee equal to one-and-a-half (1-1/2) times the normally required renewal fee for applications received ninety (90) [(90)] days or less after expiration date; and
- (6) a renewal fee equal to two (2) [2] times the normally required renewal fee for applications received greater than ninety (90) [90] days but less than one year after expiration date.

(b) [(7)] No refunds will be provided for applications submitted to the department [Department].

§7.129. Loss of Responsible Certified Applicator or Business License Holder.

(a) In the event of disability, incapacity, or death of the owner of a licensed business, and upon application of an heir electing to continue the business or noncommercial operation, the Commissioner may allow the operation to continue for a period not to exceed six (6) months. The department [Department] must be notified in writing within twenty (20) business days of the disability, incapacity, or death of the business license holder.

(b) Upon the disability, incapacity, death, or loss of a responsible certified commercial applicator[,], or certified noncommercial applicator [for a noncommercial operation], the business license holder or the noncommercial operation may request that the Commissioner allow the operation to continue until the next examination date or a reasonable time period as determined by the Commissioner. The department [Department] must be notified in writing within twenty (20) business days of the date of the disability, incapacity, loss or death of the certified applicator.

(c) (No change.)

(d) In the event the Commissioner grants the request for a business or facility to operate for a period of time without the presence of a responsible certified commercial applicator or [noncommercial] certified noncommercial applicator, the operation may only apply general use pesticides and may not add any other employees other than a certified applicator during the granted period or until a responsible certified commercial applicator or [noncommercial] certified noncommercial applicator, as appropriate, is employed and designated.

§7.130. Licensing of Persons with Criminal Backgrounds.

(a) The department [Department] performs criminal background checks on each applicant for examination or a license. Applications to examine for or receive a license, including a renewal, may be delayed as the result of evaluating any criminal activity revealed by this criminal background check.

(b) (No change.)

(c) The department [Department] may revoke, suspend, annul, or amend an existing license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or a misdemeanor, if the crime directly relates to the performance of the occupation or activity for which the license is issued and the prior criminal conviction directly affects such person's present fitness to perform such occupation or activity.

(d) - (e) (No change.)

(f) In determining whether a criminal conviction directly affects a person's present fitness to hold a license under the SPCA, the department [Department] shall consider the following factors:

(1) - (4) (No change.)

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters or recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, [;] the sheriff and chief of police in the community where the person resides, [;] and any other persons in contact with the convicted person.

(g) It is the responsibility of the applicant to the extent possible to secure and provide to the department [Department] the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the department [Department] that the applicant has maintained a record of steady employment, supported dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which convicted.

*§7.132. Requirements for Apprentice Registration.*

(a) An apprentice is a beginning employee, whose training program is the responsibility of the responsible certified commercial applicator or [~~noncommercial~~] certified noncommercial applicator and who may be trained by and work under the direct supervision of licensed certified applicators and technicians.

(b) - (c) (No change.)

(d) An apprentice registration application for technician license must be submitted [submit an apprentice registration application for technician license] within ten (10) days of beginning employment and training. Any training completed prior to the date of hire will not count towards required training needed to test and work without physically present supervision.

(e) The application must be submitted on the form prescribed by the department [Department].

(f) (No change.)

(g) An apprentice card will be issued by the department [Department] and valid until the end of the month one (1) year from the month the date employment began when all of the above requirements are met and processed. Failure to provide complete and accurate information may result in a change of the effective date of employment.

(h) (No change.)

(i) The studies and job training required for an apprentice are as follows:

(1) (No change.)

(2) Complete forty (40) hours of verifiable on-the-job training and eight (8) hours of classroom training in each license category in which the apprentice is to provide pest control services. The responsible certified commercial applicator or certified noncommercial applicator must certify in the training records of each apprentice that the apprentice has completed the required training and has demonstrated competency in each category in which the apprentice is to provide service.

(3) The twenty (20) classroom hours of general standards training, forty (40) hours of verifiable on-the-job training, and eight (8) hours of classroom training in each license category must be completed and documented on the verifiable training record prior to the apprentice taking the category exam and a license being issued.

(4) - (5) (No change.)

(j) A responsible certified commercial applicator or certified noncommercial applicator must maintain the verifiable training records and certification for each apprentice in the business files for two (2) calendar years after the calendar year in which the training or certification was completed. The verifiable training records form shall be prescribed by the department [Department] and must include, but is not limited to, the following:

(1) - (6) (No change.)

(7) printed name, signature, and license number of the trainer if the training was provided by a registered licensee of the business; or if a training event is completed outside of the business by a third-party trainer, proof of completion of the training must be maintained with the verifiable training records and referenced therein; and

(8) (No change.)

(k) - (l) (No change.)

(m) An apprentice becomes a licensed technician by:

(1) completing a minimum six (6) hour technician training course approved by the department [Department] in general training at least one (1) time prior to taking the examination;

(2) - (3) (No change.)

(n) All testing procedures shall be governed by §7.125 of this chapter (relating to Examinations) [~~title, relating to Examinations~~].

*§7.133. Technician License Requirements.*

(a) A technician is a person who has qualified for and been issued a technician's license pursuant to the provisions of §7.132 of this chapter (relating to Requirements for Apprentice Registration) and [~~title, relating to Requirements for Apprentice Registration,~~] whose training and supervision is the responsibility of the responsible certified applicator, and who works under the direct supervision of licensed certified applicators.

(b) (No change.)

(c) To add a category to a technician's license, a technician must complete eight (8) hours of classroom hours training and forty (40) hours of on-the-job training prior to taking that category's exam. The training must be recorded on the verifiable training record form prescribed by the department.

(d) [(e)] The department [Department] shall require as a condition of the renewal of each commercial or noncommercial technician's license that the responsible certified applicator must certify on the verifiable training records form that the technician has completed eight (8) hours of verifiable training in the calendar year preceding the calendar year in which the renewal is to take place. No additional training will be required in the first calendar year in which a technician is first licensed. Changing employers or moving to an inactive status does not eliminate, defer or extend the verifiable training [~~CEU~~] requirement.

(1) The eight (8) hours of verifiable training must be selected from the following general standard subject areas:

(A) Federal and state laws regulating structural pest control and pesticide application;

(B) Recognition of pest and pest damage;

(C) Pesticide labels and label comprehension;

(D) Pesticide safety;

(E) Environmental protection;

(F) Application equipment and techniques;

(G) Pesticide formulations and actions;

(H) Emergency procedures and pesticide cleanup, and procedures for the immediate reporting of spills and misapplications;

(I) Basic principles of mathematics, chemistry, toxicology, and entomology; or

(J) Non-chemical pest control techniques including biological, mechanical, and integrated pest management techniques.

(2) Two (2) hours of the eight (8) hours of training may be on-the-job training or hands-on-training verified by the responsible certified applicator.

(3) Self-study training may be used if the responsible certified applicator certifies that the training is the appropriate training. Inactive technicians may only use self-study training every other year to satisfy their annual training requirement.

(4) A technician will receive one (1) hour of credit for each department-approved [~~Department approved~~] CEU course completed.

(5) No courses may be repeated for credit within the same re-certification year.

(c) [(d)] All verifiable training records and certification for each technician [~~apprentice~~] must be maintained in the business files for two (2) calendar years after the calendar year in which the training or certification was completed.

(f) [(e)] The verifiable training records forms must be made available to the licensee within twenty (20) days of written request to a current or former employer.

(g) [(f)] The business licensee, responsible certified commercial applicator, or certified noncommercial applicator shall be responsible for the proper certification and maintenance of employee training records in accordance with this subchapter [~~Chapter 7, Subchapter H of this title~~].

(h) [(g)] Technicians unable to certify their required training at renewal or during inspection will have twenty (20) days to submit the verifiable training records for training previously obtained prior to the initiation of enforcement proceedings.

(i) [(h)] Upon written request, the Commissioner may grant a hardship extension for completion of training requirements due to extenuating circumstances. The length of the extension is at the discretion of the Commissioner. All requests are subject to review and may require additional documentation.

*§7.134. Continuing Education Requirements for Certified Applicator.*

(a) Except as provided in subsections (f) and (j)[(e) and (h)] of this section, as a requirement of annual license renewal, [~~the Department shall require~~] each certified applicator must [~~to~~] certify that they have completed department-approved [~~Department approved~~] CEUs that cover the applicator's category(ies) of certification for the preceding calendar year. This certification must be completed each calendar year for renewal of the certified applicator's license. Certified applicators who do not meet the re-certification requirements shall not be eligible to renew their licenses and will be subject to enforcement action. Licensees must obtain the appropriate number of CEUs in each calendar year as specified in this section. Changing employers or moving to an inactive status does not eliminate, defer or extend the CEU requirement.

(b) Each certified applicator is required to obtain two (2) CEUs in general training and one (1) unit in each category in which the applicator is certified. General training is defined to include the topics in §1951.351(c) of the SPCA [~~Occupations Code~~]. At least one (1) of the two (2) general training units required for recertification, must be in either federal and state laws, pesticide safety, environmental protection, or integrated pest management. The other may be in any general topic.

(c) (No change.)

(d) No certified applicator who is also a presenter can satisfy their CEU requirements through a course the certified applicator presents.

(e) [(d)] CEUs may only be obtained through an approved self-study course every other year. Self-study courses will not be accepted two (2) years in a row and will result in deficiency upon review.

(f) [(e)] Applicators will not be required to obtain CEUs during the first calendar year in which their license is issued. Applicators that become certified in additional categories during any calendar year will not be required to obtain units in those categories for that period.

(g) [(f)] Each certified applicator must keep a certificate of completion for each course attended for a period of two (2) calendar years after the calendar year in which it was obtained, and submit such records to the department [~~Department~~] upon request. These records are subject to inspection by the department [~~Department~~] at any time. Continuing education certificates must be made available to the licensee within twenty (20) days of the written request to a training provider. A copy of a current or former employee's continuing education certificates shall be made available to a licensee within twenty (20) days upon written request to the employer.

(h) [(g)] The business licensee, responsible certified commercial applicator, and certified noncommercial applicator shall be responsible for the proper certification and maintenance of employee continuing education records in accordance with this subchapter.

(i) [(h)] Certified applicators who are unable to certify their required continuing education requirements at renewal or during inspection will have twenty (20) days to submit the verifiable training records for training previously obtained prior to the initiation of enforcement proceedings. Certified applicators who [~~that~~] do not meet the recertification requirements may have their licenses suspended in all deficient categories.

(j) [(i)] Upon written request, the Commissioner may grant a hardship extension for completion of training requirements due to extenuating circumstances. The length of the extension is at the discretion of the Commissioner. All requests are subject to review and may require additional documentation.

*§7.135. Criteria and Evaluation of Continuing Education Training.*

(a) The department [~~Department~~] shall evaluate continuing education programs and assign the number of qualified category units. No more than one (1) unit will be assigned for any fifty (50) minutes of actual instruction time. Each course must be approved annually by the department. A course's content [~~course~~] may be approved for a maximum of two (2) years. After two years, any previously approved course content must be updated to reflect changes in current laws, data and/or scientific research in order to requalify for approval for continuing education credit. The department [~~Department~~] will consider the learning objectives, technical information given, the accuracy of the information, the relevance of the information to structural pest control, the qualifications of the instructor as determined by the provider, and the amount of actual training or self-study time devoted to each program in the process of evaluation. Each continuing education program, including self-study courses submitted for approval, must contain the following:

(1) - (7) (No change.)

(8) examination for electronic, online, or self-study courses, if applicable;

(9) the course provider's name, physical address, telephone number, e-mail (if available), and company, organization, or institution of higher learning affiliation; and

(10) (No change.)

(b) (No change.)



(c) Courses provided via webinar with a speaker presenting live and able to answer questions from attendees will be considered an in-person course. Applicants must mark their CEU applications to indicate the course will be given via webinar. Applicants must provide a link to join the webinar along with the course number to the department at least 72 hours prior to the webinar.

(d) [(e)] A self-study course is limited to one (1) CEU in the general training or a specific category. A course may be approved as a self-study if it meets the following additional criteria:

(1) the course taker must take an examination designed to verify the course taker's [their] knowledge of the material provided in the course. The course provider must grade the examination and keep records for a minimum of two (2) calendar years after the calendar year in which the course was given; and

(2) the course taker's grade on the examination must be at least 70% correct to obtain credit for the course.

(e) [(d)] The minimum requirements to qualify as a speaker, course presenter, self-study course provider (collectively referred to as 'speaker') are:

(1) a degree from a recognized institution of higher learning which pertains to the course being taught;

(2) five (5) years' experience as an applicator certified by the department [Department] with a current license in the category to be taught;

(3) verifiable proof of training and teaching experience within the preceding three (3) years; or

(4) a combination of education, work related training, and teaching experience which would be equivalent to two (2) of the three (3) speaker qualification requirements, as determined by the department [Department].

(f) [(e)] Any person seeking approval of a continuing education course must submit the required information at least thirty (30) days prior to the first day of presentation or first offering of a self-study course. Any changes to approved courses must be submitted to the department [Department] thirty (30) days prior to the date of presentation. The department [Department] may waive this requirement due to extenuating circumstances.

(g) [(f)] The department [Department] shall evaluate and recommend credits within thirty (30) days from the date received.

(h) [(g)] At its discretion, the department [Department] may re-evaluate its approval of a course or speaker under the provisions this section.

(i) [(h)] A certified applicator may request CEU credit by submitting the information required in subsections (a)(2), (a)(4) - (6), and (a)(9) of this section, and verification of attendance for any course attended by the certified applicator which was not previously approved by the department [Department]. The department [Department] will evaluate the request and notify the certified applicator of any CEUs awarded.

(j) [(i)] The course provider is responsible for establishing procedures for:

(1) verification of completion, including accurately recording participant attendance throughout the stated class length;

(2) awarding course completion certificates;

(3) testing to verify a participant's comprehension of the subject matter presented;

(4) the qualifications, competence, and performance of the authors, speakers, presenters, or instructors who produce or present its courses; and

(5) preparation and administration of a self-study course examination.

(k) If the course provided is required to make an unexpected change to an approved CEU course to include but not limited to the approved speaker, location, time, or date of course, the course provider must notify the department by email within 24 hours of the change.

(l) If an approved CEU course needs to be cancelled for any reason, the course provider must notify the department by email within seven (7) days of cancellation.

(m) [(j)] The course provider must issue a certificate of completion within twenty-one (21) days of the course to each applicator completing the course. This document must include at a minimum the following information:

(1) participant's name and license number;

(2) name of course provider or sponsoring agency, company or organization;

(3) course number;

(4) number of CEUs awarded;

(5) CEU category; and

(6) date and location of training or date of completion for self-study course.

(n) [(k)] The course provider must maintain course completion records for two (2) calendar years after the calendar year in which the course(s) were given and a list of participants must be forwarded to the department [Department] within twenty-one (21) days of completion of the training course on the electronic form prescribed by the department [Department]. The list must include the name of the course provider, course title and course number, number of CEUs awarded, speaker name, name and license number of participants.

(o) [(l)] For purposes of this section, a continuing education course is defined as specific instruction in a category presented by any one (1) course provider, company, or organization.

(p) [(m)] The department [Department] may monitor course providers, speakers, or course presentations, and is exempt from any fee charged for attending a CEU if department [Department] employees are monitoring the program as a part of the duties of their employment.

(q) [(n)] Course providers who falsify information on course certificates provided to participants are subject to penalties, including and up to denial of department [Department] approval for future courses.

*§7.136. Criteria and Evaluation of Technician/Noncommercial Certified Applicator Training.*

(a) The department [Department] must evaluate and approve Technician/Noncommercial Certified Applicator Training course programs. The course must be a minimum of six (6) hours and separate from other required apprentice or continuing education training. Each Technician/Noncommercial Certified Applicator Training Course submitted for approval must contain the following:

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

(4) a detailed course outline [which] indicating the scope of the course and learning objectives (the course outline should follow the topics covered in the most recent Texas Pesticide Applicator General manual developed by Texas A&M AgriLife Extension);

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

(b) (No change.)

(c) Any person seeking approval of Technician/Noncommercial Certified Applicator Training course must submit the required information at least thirty (30) days prior to the first day of presentation. The department [~~Department~~] may waive this requirement due to extenuating circumstances.

(d) The department [~~Department~~] shall evaluate and recommend approval or denial within thirty (30) days from the date received.

(e) (No change.)

(f) The minimum requirements to qualify as a speaker, course presenter, self-study course provider are:

(1) (No change.)

(2) five (5) years' experience as an applicator certified by the department [~~Department~~] with a current license in the category to be taught;

(3) (No change.)

(4) a combination of education, work related training, and teaching experience which would be equivalent to two (2) of the three (3) speaker qualification requirements, as determined by the department [~~Department~~].

(g) If the course provider is required to make an unexpected change to an approved Technician/Noncommercial Certified Applicator Training course to include but not limited to the approved speaker, location, time, or date of course, the course provider must notify the department via email within 24 hours.

(h) If an approved Technician/Noncommercial Certified Applicator Training course needs to be cancelled for any reason, the course provider must notify the department by email within seven (7) days of cancellation.

(i) [(g)] The Technician/Noncommercial Certified Applicator Training course provider must issue a certificate within twenty-one (21) days of the course to each participant completing the course. This document must include at least the following information:

(1) participant's name;

(2) apprentice registration number, if applicable, or driver's license number or state issued ID number;

(3) name of course provider, company, or organization;

(4) course title (Technician Training Course/Noncommercial Certified Applicator Training Course) and number; and

(5) date and location of training.

(j) [(h)] The course provider must maintain course completion records for two (2) calendar years after the calendar year in which the course was given and a list of participants must be forwarded to the department [~~Department~~] within twenty-one (21) days of completion of the training course. The list must include the name of the course provider, the course title, course number, name of participant, and apprentice registration number, if applicable.

(k) [(i)] The course will be approved for a maximum of two (2) years.

(l) [(j)] The department [~~Department~~] may re-evaluate or cancel a currently approved training course during the calendar year for failure to comply with the elements of the requirements of this section.

(m) [(k)] Course providers who falsify information on course certificates provided to participants are subject to penalties, including and up to denial of department [~~Department~~] approval for future courses.

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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For further information, please call: (512) 936-9360



### DIVISION 3. COMPLIANCE AND ENFORCEMENT

#### 4 TAC §§7.141 - 7.152, 7.154, 7.156

The amendments are proposed under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control, noncommercial applicators, and technicians; §1951.206, which allows the Department to adopt rules restricting advertising or competitive bidding to prohibit false, misleading, or deceptive practices by those engaging in structural pest control; §1951.207, which requires the Department to adopt rules related to inspecting and conducting investigations of structural pest control business licensees; §1951.212, which outlines requirements for the Department to inspect school districts; §1951.452, which allows the Department to require licensees to make records of pesticide use; and §1951.456, which requires the Department to adopt rules related to requirements of licensees and unlicensed persons to post and provide pest control signs and consumer information sheets in residences, workplaces, and other buildings as outlined in §§1951.453-1951.455.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

§7.141. *Identification of Licensees and Apprentices.*

(a) Each individual licensee and apprentice shall carry his or her [~~their~~] license or registration card [~~with them~~] at all times when performing structural pest control activities.

(b) Upon request, each individual licensee and apprentice shall present his or her [~~their~~] license or registration card to:

(1) (No change.)

(2) an employee of the department [~~Department~~];

(3) - (5) (No change.)

(c) (No change.)

(d) Upon request, a business licensee shall present or provide access to its [~~their~~] business license at its [~~their~~] place of business to:

(1) (No change.)

(2) an employee of the department [~~Department~~];

(3) - (5) (No change.)

(e) Each business and individual licensee and apprentice shall maintain the [their] license or registration card so that all information on the license or card is legible and shall apply with the department [Department] for a replacement license or card within ten (10) calendar days of any information on the license or card becoming illegible.

(f) A business or individual licensee or apprentice shall not add to, alter, deface, or otherwise modify any information placed on any [their] license or registration card by the department [Department].

(g) A business licensee shall prominently display its business license number on all vehicles used by the business licensee for customer contact or service. For purposes of this section, prominently displayed means:

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

(4) in letters and numbers no less than two (2) inches in height and one (1) inch in width; and

(5) in a color that contrasts with the background color of the ~~truck or~~ vehicle.

(h) (No change.)

§7.142. *Notice of Employment or Termination.*

(a) (No change.)

(b) Notice of employment of all licensees and apprentice registrations must be received by the department [Department] within ten (10) days of the date of employment and must include the full name and license number of the employee, if applicable, the date of employment, ~~and~~ the facility location where the employee training records will be maintained, and other information as may be required.

(c) Notice of termination must include the former employee's name, license number, ~~and~~ date of termination, and the employer's name and license number. Notice of termination must be received by the department [Department] within ten (10) days of the date of termination.

§7.143. *Employee Supervision.*

(a) - (b) (No change.)

(c) Apprentices shall not perform pest control services without physical supervision until they have completed all classroom training and on-the-job training and ~~required on-the-job training~~, have demonstrated proficiency, and verification has been entered in their training records by a licensed certified applicator.

(d) The business license holder~~;~~ and the responsible certified commercial applicator or certified noncommercial applicator shall be responsible for actions of employees when they are performing pest control operations.

§7.144. *Pest Control Use Records.*

(a) The responsible certified applicator or certified noncommercial applicator shall ensure that correct and accurate records of all uses of pesticides and pest control devices registered with the Environmental Protection Agency (EPA) [EPA] and the department [Department], including those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25b~~]~~, are maintained for a period of two (2) years. Pest records must be kept on the premises of the business facility location or, in the case of a certified noncommercial applicator, the employer's premises. The records must include, but are not limited to:

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

(3) names [name] of pesticides and EPA registration numbers, if they are registered or pest control devices used ~~[or EPA registration number]~~;

(4) - (9) (No change.)

(b) For termite treatments, records must include:

(1) the appropriate unit of measurement of the area treated per application site, i.e. square feet (excluding bait applications);

(2) - (3) (No change.)

(c) These records shall be made available to the department [Department] upon written or verbal request.

§7.145. *Contracts and Invoices.*

(a) Each written contract, warranty, service agreement, termite disclosure document, or guarantee of a business regulated by the department [Department] must contain on the face of the document the business name, business license number (and letter if applicable), physical address or mailing address, telephone number, and the jurisdiction statement: "Licensed and regulated by: Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, Phone (866) 918-4481, Fax (888) 232-2567."

(b) - (c) (No change.)

§7.146. *Pest Control Sign.*

(a) - (d) (No change.)

(e) Each pest control sign must be at least 8 1/2 inches by 11 inches in size and contain the required information with the first line in a minimum of 24-point type (one-fourth inch) and all remaining lines in a minimum of 12-point type (one-eighth inch). The addition of advertising and logos to the sign is permissible to the extent that such advertising does not interfere with the purpose of public notification of a pest control treatment. A standard sign in Spanish is available from the department [Department] upon request. The sign shall appear in a format approved by the department [Department]. The text and format of the sign is available on the Structural Pest Control Service website at: <http://www.TexasAgriculture.gov/spcs>, or by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, (866) 918-4481.

(f) - (h) (No change.)

§7.147. *Consumer Information Sheet.*

(a) - (b) (No change.)

(c) For an indoor treatment at a residential rental property with five (5) or more rental units, the certified applicator or technician must make the consumer information sheet available to the owner or manager of the complex. The certified applicator or technician must also supply the owner or manager with a pest control sign. The owner or manager or an employee or agent of the owner or manager, other than the certified applicator or technician, must notify residents who live in direct or adjacent areas of the treatment by:

(1) (No change.)

(2) distributing application information consistent with §7.146 of this chapter (relating to Pest Control Sign) ~~[title, relating to Pest Control Sign]~~, at least 48 hours before each planned treatment by leaving the sign on the front door of each unit or in a conspicuous place inside each unit.

(d) - (e) (No change.)

(f) The department's {Department's} consumer information sheet must be used. Copies of the consumer information sheet are available from the department [Department] in English and Spanish on the Structural Pest Control Service website at: <http://www.TexasAgriculture.gov/spcs/>, or by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, (866) 918-4481. The department's [Department's] consumer information sheet may be copied and used in accordance with this section.

(g) The pre-notification requirements of §§7.146-7.148 of this chapter (relating to Pest Control Sign, Consumer Information Sheet, and Responsibilities of Unlicensed Persons for Posting and Notification) [title] are waived if the customer and certified applicator sign a statement attesting to the fact that an emergency exists which requires immediate treatment. If such an emergency exists, the consumer information sheet must be made available by the licensee. The statement must be kept on file with the pest control use records. If the customer is not available to sign a statement at the time of treatment, that shall be recorded in the use records along with the customer's name and telephone number. An emergency is defined as an imminent hazard to health. An emergency treatment is limited to the localized area of the emergency.

§7.148. *Responsibilities of Unlicensed Persons for Posting and Notification.*

(a) Owners or managers of residential rental properties with five (5) or more units must:

(1) (No change.)

(2) distribute the application information consistent with §7.146(e) of this chapter (relating to Pest Control Sign) [title, relating to Pest Control Sign,] to each unit planned to be treated and each unit adjacent to those planned to be treated or in an adjacent or area of common access at least 48 hours before the planned time of treatment; and

(3) (No change.)

(b) - (c) (No change.)

(d) The 48 hour pre-notification requirements of subsections (a) and (b) of this section may be waived if an emergency exists and the customer and certified applicator sign a statement attesting to the fact that an emergency exists that requires immediate treatment. The statement must be kept on file with the pest control use records at the business licensee's [licensee] location. Certified noncommercial applicators may attest to an emergency by signing a statement attesting to the emergency and must keep the statement on file with the pest control use records. An emergency is defined as an imminent hazard to health and emergency treatment is limited to the localized area of the emergency.

(e) A person may not be considered in violation of this section if a pest control sign is removed by an unauthorized person or if the space to be treated is vacant, unused, and unoccupied at the time of treatment.

§7.149. *Inspections.*

Each licensed pest control business shall be inspected at least once in the business's first year of receiving a license and at least every four (4) years thereafter. School districts will be inspected at least once every five (5) years. The department [Department] may waive these requirements due to department [Department] staff availability, budgetary constraints, inspection trends, or operational efficiencies. Businesses and school districts demonstrating a lack of compliance with department [Department] rules may be inspected more frequently than

every four (4) years for businesses and every five (5) years for school districts based on risk using the following elements of consideration:

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

§7.150. *General Standards for Use of Pesticides.*

(a) (No change.)

(b) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with any permit or emergency exemption issued by the department [Department] or the Environmental Protection Agency [EPA].

(c) (No change.)

§7.151. *General Standards for Storage and Disposal of Pesticides.*

(a) - (e) (No change.)

(f) For every pesticide that is being stored, a hard copy of the complete label, shall be made immediately available for inspection to the department's [Department's] inspector at the site where the pesticide is being stored.

§7.152. *Advertising.*

(a) A licensee must not use false, misleading, or deceptive advertising. Examples of statements or representations which constitute false, misleading, or deceptive advertising include the following:

(1) - (11) (No change.)

(b) - (d) (No change.)

§7.154. *Incidental Use Situation Fact Sheet.*

(a) The Incidental Use Fact Sheet must contain the following text: "This fact sheet must be distributed to all city, county, and state employees who apply general use pesticides and are not licensed by the Texas Department of Agriculture. The fact sheet and instruction must be provided upon initial employment and thereafter must be available as needed. These general use pesticides include insecticides, herbicides, fungicides and rodenticides and involve applications made both inside and outside of structures. Incidental Use is not intended for long term or extensive pest control measures. Where long term pest control is required, a trained, licensed person is to make the applications. Incidental Use is defined as "A pesticide application on an occasional, isolated, site-specific basis that is incidental to the primary duties of an employee and involves the use of general use pesticides after instruction as provided by rules adopted by the department. Examples of Incidental Use Situations are treating fire ants in a transformer box, or treating of ants by a janitor or clerical employee in a break area. Incidental is defined as site-specific and incidental to the employee's primary duties. If it is a part of the employee's primary duty to make applications of pesticides, that employee is required, by law, to obtain a license, depending on the location and type of application. In all cases of incidental use, the employee should use the least hazardous, effective method of controlling pests. If chemicals are to be utilized, they must be applied in strict accordance with manufacturer labels of "General Use" products being used. Applications made inconsistent with the label requirements of the general use product may result in penalties being assessed against the individual and/or the certified noncommercial applicator or technician responsible. "Incidental Use Situation" applications of pesticides are regulated by the department. If you have any questions or comments, contact the department at 866-918-4481 [(512) 305-8250]; written inquiries may be addressed to the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847.

(b) - (d) (No change.)

§7.156. *Entry and Access.*

(a) The department [Department] may conduct investigations and inspections of structural pest control activities involving any person in this state to determine compliance with the SPCA, and department [Department] rules.

(b) In conducting investigations, the department [Department] may:

(1) (No change.)

(2) enter premises where individuals are performing or are suspected of performing pest control operations to inspect the use of pesticides and devices, question any individuals who may have relevant knowledge or information, check employee credentials, collect samples, identify pests, and inspect equipment; and

(3) (No change.)

(c) Any licensee or other individual suspected of violations involving structural pest control who interferes with an employee of the department [Department] attempting to enter or access property, equipment, or records for purposes of this chapter, shall be subject to disciplinary action up to and including revocation of licenses and/or registrations.

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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## DIVISION 4. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

### 4 TAC §7.161, §7.162

The amendments are proposed under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control; §1951.201, which makes the Department the sole authority to license those engaged in the business of structural pest control; and §1951.501 which allows the Commissioner of Agriculture to suspend, revoke, or deny a structural pest control license.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

*§7.161. Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses.*

Any such action may be accomplished by the department after notice and hearings, as provided for by the SPCA [Occupations Code, Chapter 1951] and the Administrative Procedures Act, Texas Government Code, Chapter 2001. No revocation, suspension, annulment, or withdrawal of any license is effective unless prior to the institution of department proceedings, the department gave notice by personal service or by certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given the opportunity to show compliance with all requirements of law for the retention of the

license. The following are grounds for revocation, suspension, penalties, reprimanding, refusal to examine, and refusal to issue or renew licenses:

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

(3) engaging in an advertising practice prohibited in §7.152 of this chapter [title] (relating to Advertising); advertising services which the licensee is not authorized to provide; engaging in false, misleading, or deceptive acts or practices; advertising in a name without a valid business license; or advertising in an unauthorized category;

(4) has been convicted or has pleaded guilty to a violation of the SPCA [Aet] as amended, or any regulation adopted hereunder, or any of the laws or regulations of this state, another state, or the United States, relating to the licensing of pest control operators and pesticide use;

(5) has been convicted of or has pled guilty to a felony or misdemeanor involving moral turpitude, under the law of this state and other states of the United States within seven (7) years prior to the date of application, provided that when the applicant is a defendant in any action in which the defendant is charged with a felony or a misdemeanor involving moral turpitude, the department may delay processing of the application until final disposition of any such criminal proceedings;

(6) has a criminal background as explained in §7.130 [~~§7.129~~] of this chapter [title] (relating to Licensing of Persons with Criminal Backgrounds);

(7) failure of the licensee to supply the department or its authorized representative, upon request, with true and accurate information concerning methods and materials used, or work performed, or other information essential to the public health and welfare and to the administration and enforcement of the SPCA [Aet];

(8) - (10) (No change.)

(11) failure of a business licensee or certified noncommercial applicator to register employees or failure to pay license fees [fee] for employees;

(12) (No change.)

(13) failure to make records of pesticide use and keep them available as required by the SPCA [Aet], as amended, and §7.144 this chapter [title] (relating to Pest Control Use Records);

(14) failure of a business licensee to notify the department when a certified applicator, technician, or apprentice is no longer employed [leaves their employment];

(15) failure of a business licensee to put identifying letters and numbers on vehicles as required by regulations;

(16) (No change.)

(17) failure of a business licensee or certified noncommercial applicator to notify the department of a change of address of their company or organization;

(18) failure of a business licensee or certified noncommercial applicator to give the department an address where a licensee may be located;

(19) failure of a [the] certified applicator or business licensee to adequately supervise employees;

(20) failure of a certified applicator [licensee], technician, or apprentice to notify the department of a change of employment [when he or she moves or changes employers];

(21) failure to maintain continuous minimum liability insurance and continuing to operate during a lapsed period;

(22) - (23) (No change.)

(24) failure to provide signs, disclosure, and information sheets;

(25) - (26) (No change.)

(27) Permitting, aiding, abetting, or conspiring with a person to intentionally violate or circumvent a law or regulation enforced by the department;

(28) Denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, territory, or Indian tribal government or the federal government;

(29) - (30) (No change.)

(31) failure to comply with §7.135 or §7.136 of this chapter [title] (relating to Criteria and [for] Evaluation of Continuing Education Training and Criteria and Evaluation of Technician/Noncommercial Certified Applicator Training);

(32) failure to comply with Division 7 [§7.150] of this subchapter [title] (relating to Integrated Pest Management Program for School Districts [Schools]);

(33) failure to comply with any section of the SPCA [Act] or this subchapter [these regulations]; and

(34) failure to provide a disclosure document prior to, or accompanying, or at the same time, with a written estimate as described in §7.174 of this chapter [title] (relating to Wood Destroying Insect [Termite] Treatment Disclosure Documents).

§7.162. *Suspension or Revocation.*

(a) Suspension or revocation of any license under the provisions of §7.161 of this chapter [title] (relating to Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses) shall not be for less than ten (10) days nor more than two (2) years at the discretion of the department. If a license is suspended or revoked under the provisions thereof, the licensee shall, within five (5) days of such suspension or revocation, surrender all licenses and identification cards issued thereunder [there under] to the Commissioner [director] or the Commissioner's designee [his authorized representative].

(b) A licensee who is notified that the department intends to suspend or revoke the licensee's license must ask for a hearing by filing a petition with the Commissioner or the Commissioner's [his] designee within twenty (20) days of the date of the letter sent to the licensee. The petition shall set out legal basis and supporting facts for challenging the department's decision and the relief sought by the petitioner including a request for hearing. Upon receipt of the petition, if the Commissioner or the Commissioner's [his] designee determines that the petition is within the jurisdiction of the department, the Commissioner or the Commissioner's [his] designee shall request a hearing before the State Office of Administrative Hearings.

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#### 4 TAC §7.163

The repeal is proposed under Texas Occupations Code, §1951.0021, which allows the Department through its Structural Pest Control Service to regulate and license those engaged in the business of structural pest control.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

§7.163. *Unlawful Acts.*

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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## DIVISION 5. TREATMENT STANDARDS

#### 4 TAC §§7.172 - 7.178

The amendments are proposed under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control, noncommercial applicators, and technicians; §1951.201, which makes the Department the sole authority to license those engaged in the business of structural pest control; and §1951.203, which requires the Department to develop standards and criteria to issue structural pest control licenses.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

§7.172. *WDI [Subterranean Termite] Post Construction Treatments.*

(a) All pesticides used for post construction termite treatments must be registered with the Environmental Protection Agency [EPA] and the department [Department]. All pesticide liquid applications must be made by using the application rates and methods and by following the precautionary statements on the labeling of the pesticide being used. All termite baiting system applications must be made using the methods and following the precautionary statements on the product label.

(b) (No change.)

(c) All treatments must strictly adhere to the procedures outlined in the disclosure statement required in §7.174 of this chapter (relating to Wood Destroying Insect Treatment Disclosure Documents) [title, relating to Subterranean Termite, Drywood Termite and Related

Subterranean Termite, Drywood Termite]. A deviation will be permitted when unexpected circumstances occur necessitating a change in the treatment and the applicator responsible for the treatment provides the customer with a written addendum to the contract or disclosure documents at the completion of the treatment.

(d) (No change.)

(e) The business license holder or certified noncommercial applicator must keep and maintain a correct and accurate copy of the Wood Destroying Insect [Termite] Treatment Disclosure Documents for a period of two (2) years.

§7.173. *Subterranean Termite Pre-Construction Treatments.*

(a) (No change.)

(b) All pesticides used for pre-construction termite treatments must be registered with the Environmental Protection Agency [EPA] and the department [Department]. All pesticide liquid applications must be made by using the application rates and methods and by following the precautionary statements on the labeling of the pesticide being used.

(c) For a full treatment, the entire structure must be treated to provide a continuous horizontal and vertical pesticide barrier. The final treatment shall be performed within thirty (30) days of notification of completion of landscaping or one (1) year from the date of completion of construction, whichever comes first. However, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the application, a partial treatment is permitted if the owner of the structure or the person in charge of the construction and the licensee for the pest control company sign a statement attesting to the construction conditions, and attach it to the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated and send copies to the owner of the property within seven (7) days of the application. A copy of the disclosure with an amended diagram or blueprint or building plat showing the exact areas to be treated must be made available to the department [Department] upon request. A partial treatment will also be permitted if allowed by label directions and if the licensee proposing the treatment issues a Wood Destroying Insect [Termite] Treatment Disclosure Document prior to the treatment.

(d) (No change.)

(e) A primary treatment of the wood framing (such as a borate treatment) must follow full label application instructions and must be performed with a termiticide that has specific label instructions to be used as a primary treatment to offer protection for prevention of subterranean termites in new construction. This treatment may be used in lieu of a full, partial, or bait treatment and must include application instructions to exposed surfaces of wood framing with exterior sheathing in place but before any walls are enclosed to a height of not less than two (2) feet above a contact with a slab foundation or a (2) foot horizontal and vertical treatment of wood above contact with a concrete crawlspace or basement foundation. Label instructions must provide application instructions for the prevention of subterranean termite intrusion and tubing onto non-cellulose areas around bath-traps, plumbing penetrations, and concrete foundation areas.

(f) Notice of all pre-construction treatments with contracts requiring treatment of a structure other than a single family dwelling must be submitted between the hours of 6:00 a.m. and 9:00 p.m. using the department's [Department's] designated notification system at least four (4), and no more than twenty-four (24)[;] hours prior to a termiticide application. The licensee must provide address and site location, type of treatment (partial or full), date and time of treatment, approximate and appropriate unit of measurement used under contract, and the name,

license number, and physical address of the pest control business. If the treatment is cancelled, notice of cancellation must be sent using the department's [Department's] designated notification system within one (1) hour of the time the pest control business learns of the cancellation.

(g) (No change.)

§7.174. *[Subterranean Termite, Drywood Termite and Related] Wood Destroying Insect Treatment Disclosure Documents.*

(a) As part of each written estimate submitted for a subterranean termite, drywood termite, powder post beetle, wood boring beetle, or related wood destroying insect (excluding carpenter ants) treatment to a customer, the pest control business proposing the treatment must present the prospective customer or designee with disclosure documents. Verbal estimates may be provided to customers to advise of a general range of treatment costs, but a written estimate must be provided before beginning a treatment. Written estimates for termite and related wood destroying insect treatments and treatment disclosure documents shall only be made by licensed technicians or certified applicators licensed in the termite category.

(b) Each subterranean termite, drywood termite, powder post beetle, wood boring beetle, or related wood destroying insect (excluding carpenter ants) treatment disclosure document must include, but is not limited to:

(1) - (11) (No change.)

(12) a consumer information sheet described in §7.147 of this chapter (relating to Consumer Information Sheet [title, relating to Consumer Information Sheet]); and

(13) The jurisdiction statement:[;] "Licensed and regulated by: Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, Phone (866) 918-4481, Fax (888) 232-2567."

(c) For a re-treatment of a property for an existing customer, the pest control business must provide the following before conducting the re-treatment:

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

(3) a consumer information sheet described in §7.147, of this chapter [title].

(d) The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain correct and accurate copies of the disclosure documents [Disclosure Documents] for a period of two (2) years.

§7.175. *Official Wood Destroying Insect Report Inspection Procedures.*

(a) Inspections for the purpose of issuing a WDIR must be conducted in a manner consistent with the procedures described in this section by a licensed certified applicator or technician in the Termite and Wood Destroying Insect Control [termite] category. The printed name and registration number or license number of any employees receiving training that are present for the inspection must be listed on the report. The purpose of the inspection is to provide a WDIR regarding the absence or presence of wood destroying insects and conditions conducive to wood destroying insect infestation. The inspection should provide the basis for recommendations for preventive or remedial actions, if necessary, to minimize economic losses. Only for purposes of a Real Estate Transaction Inspection Report, as described in §7.176 of this chapter (relating to Real Estate Transaction Inspection Reports) [title, relating to Real Estate Transaction Inspection Reports], there must be visible evidence of active infestation in the structure or visible evidence of a previous infestation in the structure with no evidence of prior treatment to recommend a corrective treatment. The inspection

must be conducted so as to ensure examination of all visible accessible areas in or on a structure in accordance with accepted procedures. While such an examination may reveal wood destroying insects, there are instances when concealed infestations and/or damage may not be discovered. Examinations of inaccessible or obstructed areas are not required.

(b) Inaccessible or obstructed areas recognized by the department [~~Department~~] include, but are not limited to:

(1) (No change.)

(2) the interior of hollow walls, spaces between a floor<sub>1</sub> or porch deck and the ceiling or soffit below;

(3) (No change.)

(4) areas behind or beneath stoves, refrigerators, furniture, built-in cabinets, insulation, and floor coverings; and

(5) (No change.)

(c) - (d) (No change.)

(e) Visible evidence of the following conditions must be reported:

(1) - (4) (No change.)

(5) conditions conducive to wood destroying insect infestation, including but not limited to:

(A) - (F) (No change.)

(G) expansion joints or cracks in slab; and

(H) decks; and [or]

(6) (No change.)

#### §7.176. Real Estate Transaction Inspection Reports.

(a) All inspection reports issued regarding the visible presence or absence of termites, other wood destroying insects and conditions conducive to infestation of wood destroying insects in connection with a real estate transaction must be made on a form prescribed by the department [~~Department~~]. Forms must be maintained in the inspection file. No alterations or revisions to the department-prescribed form are permitted; however, larger graphs, photos, or other supporting documentation may be attached as an addendum to supplement preexisting information.

(b) Lending providers such as the Department of Veterans Affairs [~~Administration~~] may require the inspection results on another form. That form is supplemental to the required department [~~Department~~] form and must be maintained in the inspection file.

(c) The department [~~Department~~] report form includes a space to report conditions consistent with §7.175 of this chapter (relating to the Official Wood Destroying Insect Report Inspection Procedures) [title, Wood Destroying Insect Treatment Disclosure Documents], which is available at: <http://www.TexasAgriculture.gov/spcs/>, or by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847, (866) 918-4481.

(d) For each inspection, copies of the completed form must be prepared for:

(1) (No change.)

(2) business files of the business licensee [license holder] issuing the report.

(e) The business licensee issuing the report must retain records of inspection reports for a minimum of two (2) years.

#### §7.177. Posting Notice of Inspection.

(a) Upon completion of an inspection for the purposes of completing a WDIR, the licensee [~~inspector~~] must post a durable sticker on the wall adjacent to the water heater, electric breaker box, or beneath the kitchen sink giving the name and license number of the licensee, the date of the inspection, and a statement that the sticker should not be removed.

(b) (No change.)

#### §7.178. Structural Fumigation Requirements.

(a) Fumigation of structures to control wood destroying insects or other pests shall be performed only under the direct on-site supervision of a certified applicator licensed in the category of structural fumigation. Direct on-site supervision means that the certified applicator exercising such supervision must be present at the site of the fumigation during the introduction of the fumigant, any reentry prior to aeration, during the initial aeration process, and when the structure is released for occupancy.

(b) - (c) (No change.)

(d) Structural fumigation shall be performed in compliance with all label requirements applicable to state and federal laws and regulations.

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

(4) A trained person in structural fumigation must [may] be a registered apprentice, licensed technician, or certified applicator in the structural fumigation category having been trained in the proper use of a SCBA and clearing devices.

(e) - (k) (No change.)

(l) For the purpose of maintaining proper safety, establishing responsibility in handling the fumigants, and to ensure a successful fumigation the business performing the structural fumigation shall compile and retain a report for each fumigation job and/or treatment for a period of at least two (2) years. The certified applicator responsible for the fumigation must have a copy of the report at the time of the fumigation. The report for each fumigation job or treatment must contain the following information to be recorded as the fumigation progresses:

(1) - (13) (No change.)

(14) proof that the department [~~Department~~] was notified of the structural fumigation with the date and time of the notification.

(m) Fumigations for the purpose of controlling wood destroying insects are subject to the provisions of §7.174 of this chapter (relating to Wood Destroying Insect Treatment Disclosure Documents) [title, relating to Subterranean Termite, Drywood Termite and Related Wood Destroying Insect Treatment Disclosure Documents].

(n) Every licensee engaged in application of a fumigant is required to use an approved and calibrated clearance device consistent with the fumigant label.

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

(3) Proof of calibration must be kept on file for a period of two (2) years and available for review by the department [~~Department~~]. The record of proof for each clearing device shall contain the date of calibration and the name of the independent and qualified facility or person who performed the calibration.

(o) (No change.)

(p) Notice of all fumigations of a structure must be submitted using the department's [~~Department's~~] designated notification system



between the hours of 6:00 a.m. and 9:00 p.m., at least four (4), and no more than twenty-four (24) hours prior to the structural fumigation application. If the structural fumigation is cancelled, notice of the cancellation must be sent using the department's [Department's] designated notification system within three hours of the time the pest control company learns of the cancellation. The licensee must provide:

(1) - (6) (No change.)

(q) Before an individual may apply for an initial certified applicator's license in the structural fumigation category the following experience requirements must be met:

(1) Attend a forty (40) hour structural fumigation school that has at least sixteen (16) hours of hands-on-training [hands on training], and has been approved by the department [Department]; or

(2) Obtain forty (40) hours of on-the-job training with at least sixteen (16) hours of hands-on-training [hands on training] that is approved by the department [Department]. Department-approved [Department approved] hands-on-training includes the following:

(A) Inspect the structure and identify pest(s) prior to fumigation;

(B) Prepare disclosure documents pursuant to the provisions of §7.174, of this chapter [title];

(C) Measure the structure and calculate volume;

(D) - (E) (No change.)

(F) Secure materials left inside the structure, check pilot lights and [&] appliances;

(G) Tarp, place snakes, or otherwise seal the structure for fumigation;

(H) - (K) (No change.)

(L) Aerate the structure;

(M) - (Q) (No change.)

(r) Current certified applicators with the structural fumigation category must receive four (4) hours of training per year to maintain their structural fumigation certification. The four (4) hours of training may be classroom or on the job training. Department-approved [Department approved] hands-on-training includes the following:

(1) (No change.)

(2) Prepare disclosure documents pursuant to the provisions of §7.174 of this chapter [title];

(3) Measure the structure and calculate volume;

(4) - (5) (No change.)

(6) Secure materials left inside the structure, check pilot lights and [&] appliances;

(7) Tarp, place snakes, or otherwise seal the structure for fumigation;

(8) - (12) (No change.)

(13) Aerate the structure;

(14) - (18) (No change.)

(19) Secure [Securing] the fumigant for transportation consistent with label directions.

(s) (No change.)

(t) A verifiable performance/training records form will be made available to the department [Department] upon request. These performance/training records forms shall be kept on a format prescribed by the department in the business file for at least two (2) years. The responsible certified applicator for the company that performed the training must certify in the training records of each certified applicator that the certified applicator has completed the required training and has demonstrated competency. The verifiable performance/training records form will be made available to the certified applicator or technician upon written 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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Skyler Shafer

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Texas Department of Agriculture

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For further information, please call: (512) 936-9360



## DIVISION 6. STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

### 4 TAC §§7.191 - 7.193, 7.196

The amendments are proposed under Texas Occupations Code, §1951.105, which requires the Department to adopt rules for the operation of the Structural Pest Control Advisory Committee.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

#### §7.191. Purpose of the Committee.

(a) The Structural Pest Control Advisory Committee shall be composed of eleven (11) members appointed by the Commissioner.

(b) The Committee shall meet regularly, as prescribed by §7.196 of this chapter [title] (relating to Committee Meetings), to consider matters relating to the regulation and licensing of persons engaged in the business of structural pest control. The Commissioner, or the Commissioner's [his] designee, shall have the authority to direct that the Committee include on its agenda any matters relating to the business of structural pest control, or the licensing and regulation of persons engaged in that business.

(c) The Committee shall gather and provide information to the Commissioner regarding the practice of structural pest control in order to aid the Commissioner and the department [Department] to provide excellent customer service to the public and the structural pest control industry, [;] to enhance educational and professional standards of license holders, [;] and [;] to protect the health, safety and welfare of the public.

(d) The Committee shall advise the Commissioner and the department [Department] regarding the licensing and regulation of persons engaged in structural pest control, including advice on:

(1) - (6) (No change.)

#### §7.192. Rules Governing Operation of the Committee.

(a) At the first meeting of each year, a Chairman and a Vice-Chairman [~~Vice Chairman~~] shall be elected by the members of the Committee for a term of one (1) year.

(b) The Chairman of the Committee is responsible for:

(1) setting an agenda for each committee meeting; and

(2) may add an item to an agenda on request by the department [~~Department~~] or Commissioner.

(c) The members, other than the Commissioner of State Health Services, shall serve staggered four (4)-year [~~four-year~~] terms. [~~(Initial committee members may serve shorter terms.)~~] The terms of four (4) members of the Committee shall expire on February 1 of each odd-numbered year.

(d) - (e) (No change.)

(f) All Committee members must successfully complete, during the first calendar quarter of their term, a course provided by the department [~~Department~~] or otherwise approved by the Commissioner that covers the Texas Open Meetings Act, the Texas Public Information [~~Open Records~~] Act, the rulemaking [~~Rulemaking~~] process in Texas, the requirements of laws relating to conflicts [~~the conflict~~] of interest [~~laws~~] or other laws relating to public officials in Texas, and any applicable ethics policies adopted by the department [~~Department~~].

§7.193. *Appointment of Committee Members.*

(a) - (b) (No change.)

(c) The department [~~Department~~] shall develop a form that prospective Committee appointees must complete prior to being appointed [~~the Commissioner appointing that person~~] to the Committee. The form shall be designed to elicit all information necessary to determine whether the person is qualified to serve as a Committee member.

(d) The [~~Other than the appointment of the original Committee members, the~~] Commissioner shall make appointments to the Committee during January of each odd-numbered year, or as necessary to fill vacancies.

(e) (No change.)

(f) Other than the Commissioner of State Health Services, a person may serve no more than two (2) consecutive four (4) year terms as a member of the Committee.

(g) To qualify as a member of the Committee who is from an institution of higher education, an individual must have a post-graduate (masters or doctoral) degree and be, at the time of [~~his or her~~] appointment, employed in a teaching capacity at an institution of higher education and have experience teaching courses that demonstrate that the individual is knowledgeable in the science of pests and pest control.

§7.196. *Committee Meetings.*

(a) The Committee shall meet at least once during each quarter of a calendar year.

(b) - (c) (No change.)

(d) In order for the Committee to meet and take any action, at least six (6) [~~five (5)~~] of the eleven (11) [~~nine~~] members must be present to constitute a quorum.

~~(e) During the first meeting of each calendar year the Committee will include on its agenda as an item of business a self-assessment of its actions during the prior year.~~

~~(1) The self-assessment will be done using a process and on a form prepared by the Commissioner or his designee.~~

~~(2) In addition to evaluating its performance during the prior calendar year, the Committee shall establish goals to improve performance during the upcoming year.~~

~~(3) The Committee shall forward the self-assessment to the Commissioner for comment, which will be considered at the next subsequent meeting of the Committee after receipt of the Commissioner's comments.~~

(e) ~~(f)~~ The Committee shall conduct its meetings using procedural rules which substantially comport with Robert's [~~Roberts'~~] Rules of Order.

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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**4 TAC §7.195**

The repeal is proposed under Texas Occupations Code, §1951.105, which requires the Department to adopt rules for the operation of the Structural Pest Control Advisory Committee.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

§7.195. *Disqualification of Members.*

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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**DIVISION 7. INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS**

**4 TAC §§7.201 - 7.205**

The amendments are proposed under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control, and §1951.212, which requires the Department to set standards for an integrated pest management program for school districts and to create rules for categories of pesticides school districts can apply.

The code affected by the proposal is Texas Occupations Code, Chapter 1951.

*§7.201. Responsibility of School Districts [to Adopt an IPM Program].*

Each school district shall establish, implement, and maintain an Integrated Pest Management (IPM) program. An IPM program is a regular set of procedures for preventing and managing pest problems using an integrated pest management strategy, as defined in §7.114 of this chapter (relating to Definitions [title (relating to Definition of Terms)]). The school district is responsible for each IPM Coordinator's compliance with these regulations.

(1) (No change.)

(2) Each school district superintendent shall appoint an IPM Coordinator(s) to implement the school district's IPM program. Not later than 90 days after the superintendent designates or replaces an IPM Coordinator(s), the school district must report to the department [Department] the newly appointed coordinator's name, address, telephone number, email address and the effective date of the appointment. A school district that appoints more than one IPM Coordinator shall designate a Responsible IPM Coordinator who will have overall responsibility for the IPM program and provides oversight of subordinate IPM Coordinators regarding IPM program decisions. When a school district removes an IPM Coordinator, the departing IPM Coordinator, Superintendent, or Superintendent's designee must notify the department of the removal within ten (10) days in writing. A school district may not be without an IPM Coordinator for more than 30 days.

(3) - (4) (No change.)

*§7.202. Education Requirements and Responsibilities of [the] IPM Coordinators [Coordinator].*

(a) The IPM Coordinator(s) shall [be responsible for implementation of the school district IPM Program. In addition, the IPM Coordinator(s) shall:]

[(1)] successfully complete a department-approved [Department-approved] IPM Coordinator training course within six (6) months of appointment[;] and

[(2)] obtain at least six (6) hours of department-approved [Department-approved] IPM CEUs [continuing education units (CEU)] every three years[, beginning the effective date of this rule or the date of designation, whichever is later]. The three-year period will begin on [from] the date the IPM Coordinator receives initial training after being appointed by the superintendent[, or if currently designated and trained as the IPM Coordinator, when this rule revision goes into effect]. No [approved] course may be repeated for credit within the same three-year period. One of the six (6) CEUs must be related to laws and regulations specific to IPM programs in schools. IPM Coordinators may satisfy the CEU requirements through one or more of the following methods:

(1) [(A)] completing [Completing] a department-approved [Department approved] training course for IPM Coordinators;

(2) [(B)] completing [Completing] courses that have been approved in the pest, lawn and ornamental, weed control or general IPM category; or

(3) [(C)] [By] submitting information for a course completed, that was not previously approved by the department [Department], for the evaluation of credit. The information must include the name of the instructor(s), verification of attendance at the course, length of time of the course stated in hours and minutes, a detailed course outline indicating the scope of the course and learning

objectives, and the number of continuing education units requested. Additionally, the IPM Coordinator must demonstrate that the course content is appropriate and pertinent to the use of pesticides and the implementation of IPM strategies at school buildings and other school district facilities.

(b) [(3)] If the IPM Coordinator is also a licensed applicator, the CEUs obtained for the license under §7.134 of this chapter [title] (relating to Continuing Education Requirements for Certified Applicators) will count towards the six (6) hours of IPM CEUs.

(c) [(4)] Following the three-year effective CEU period, IPM Coordinators must maintain certificates of completion for one additional calendar year (period through December 31). The certificates are subject to inspection by the department [Department] at any time upon request.

(d) [(5)] In addition to implementing the school district IPM program, the [The] IPM Coordinator shall oversee and be responsible for:

(1) [(A)] coordination of pest management personnel, ensuring that all school employees who perform pest control, including those employees authorized to perform incidental use applications, have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(2) [(B)] ensuring that all IPM program records, including incidental use training records (as provided for under §7.205 of this chapter [title] (relating to Incidental Use for Schools)), pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints are maintained for a period of two (2) years and are made available to a department [Department] inspector upon request;

(3) [(C)] working with district administrators to ensure that all pest control proposal specifications for outside contractors are compatible with IPM principles, and that contractors work under the guidelines of the school district's IPM policy;

(4) [(D)] ensuring that all pesticides used on school district property are in compliance with the school district's IPM program and that current pesticide labels and Safety Data Sheets (SDS) are available for interested individuals upon request;

(5) [(E)] overseeing and implementing that portion of the plan that ensures that school district administrators and relevant school district personnel are provided opportunities to be informed and educated about their roles in the IPM program, reporting, and notification procedures;

(6) [(F)] ensuring that pesticide applications, including the approval of emergency applications at buildings and on school district grounds, are conducted in accordance with Division 7 of this subchapter; and

(7) [(G)] maintaining a current copy of the school district's IPM policy and making available to a department [Department] inspector upon request.

*§7.203. Responsibilities of Certified Applicators and Licensed Technicians.*

The certified commercial or noncommercial certified applicator or licensed technician shall:

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

(6) consult with the IPM Coordinator(s) concerning the use of control measures in buildings and grounds, including residential properties; and

(7) (No change.)

§7.204. Pesticide Use in School Districts.

All pesticides used by school districts must be registered with the United States Environmental Protection Agency (EPA) and the department [Texas Department of Agriculture], with the exception of those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25(b). All pesticides used by school districts must also bear a label as required by FIFRA and Chapter 76 of the Texas Agriculture Code. Pesticides intended and labeled for use on humans are exempt from this section. Pesticide use must also meet the following requirements:

(1) Pest control signs shall be posted at least 48 hours prior to a pesticide application inside school district buildings, including residential properties, as provided for under §7.148 of this chapter [title] (relating to Responsibilities of Unlicensed Persons for Posting and Notification).

(2) For outdoor applications made on school district grounds, including residential properties, the treated area must be identified at all entry points with a sign, or must be secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

(3) - (5) (No change.)

(6) School districts are allowed to apply the following pesticides to control pests, rodents, insects and weeds at school buildings, grounds, or other facilities in accordance with the approval for use and restrictions listed for each category:

(A) Green Category Pesticides.

(i) Definition: A pesticide will be designated as a Green Category pesticide if it meets the following criteria:

~~[(I)] all active ingredients belonging to EPA toxicity categories III and IV;~~

[(I)] [(H)] it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

[(II)] [(H)] it consists of the active ingredient boric acid; disodium octoborate tetrahydrate or related boron compounds; silica gel; diatomaceous earth; or belongs to the class of pesticides that are insect growth regulators; microbe-based insecticides; botanical insecticides containing no more than 5% synergist (and does not include synthetic pyrethroids); biological (living) control agents; pesticidal soaps; natural or synthetic horticultural oils; or insect and rodent baits in tamper-resistant containers;[;] or for crack-and-crevice use only;

(ii) - (iii) (No change.)

(B) Yellow Category Pesticides.

(i) Definition: A pesticide will be designated as a Yellow Category pesticide if it meets the following criteria:

~~[(I)] all active ingredients belonging to EPA toxicity categories III and IV;~~

[(I)] [(H)] it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

[(II)] [(H)] it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph.

(ii) - (iii) (No change.)

(C) Red Category Pesticides.

(i) Definition: A pesticide will be designated as a Red Category Pesticide if it meets the following criteria:

~~[(I)] all active ingredients belonging to EPA toxicity category I or II;~~

[(I)] [(H)] it contains a WARNING or DANGER signal word on the product label; and

[(II)] [(H)] it contains an active ingredient that has been designated as a restricted use pesticide, a state-limited-use pesticide or a regulated herbicide; and it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph, or a Yellow Category pesticide under subparagraph (B)(i) of this paragraph.

(ii) - (iii) (No change.)

§7.205. Incidental Use for Schools.

(a) - (c) (No change.)

(d) Pest control use records for all incidental pesticide use application, including the reason for application and justification for emergency, must be maintained by the IPM Coordinator for a period of two (2) years.

(e) (No change.)

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

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Skyler Shafer

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CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER E. APPEAL PROCEDURES FOR FOOD AND NUTRITION PROGRAMS

4 TAC §§26.201, 26.203 - 26.205, 26.207

The Texas Department of Agriculture (Department) proposes new Chapter 26, Subchapter E, §§26.201, 26.203 - 26.205, and 26.207. Proposed new §§26.200 - 26.208 were published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4039). After further review of §§26.201, 26.203 - 26.205, 26.207, and 26.208, as originally published, the Department has opted to withdraw them, which can be found in Withdrawn Rules section of this issue, and proposes new text for §§26.201, 26.203 - 26.205, and 26.207.

The proposed new rules for appeal procedures for the food and nutrition programs and the repeal of existing rules are the result of a comprehensive review of Chapter 1, Subchapter P pursuant to the four-year rule review prescribed by Texas Government

Code §2001.039. The proposed rules will eliminate duplicative and unnecessary provisions and provide for a more simple and efficient appeals process for the Department's food and nutrition programs.

New §26.201 defines important terms for the subchapter.

New §26.203 sets forth the appeal procedures for the food and nutrition programs administered by the Department.

New §26.204 provides the procedures for filing documents.

New §26.205 sets forth the procedures for a hearing.

New §26.207 describes the standard of review.

Ms. Lena Wilson, Assistant Commissioner, Food & Nutrition Division, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Ms. Wilson has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be improved readability and clarity of the rules and appeals process.

Ms. Wilson has determined there are no anticipated economic costs to persons required to comply with the proposed rules.

Ms. Wilson has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed rules are in effect:

1. the proposed rules do not create or eliminate a government program;
2. implementation of the proposed rules does not require the creation or elimination of employee positions;
3. implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed rules do not require an increase or decrease in fees paid to the Department;
5. the proposed rules create new regulations;
6. the proposed rules will not repeal an existing regulation;
7. there may be an increase in the number of individuals subject to the rules, depending on the number of applicants who seek to participate in the programs; and
8. the proposed rules do not positively or adversely affect this state's economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted by mail to Ms. Tanya Vermeeren, Assistant General Counsel for Food & Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [tanya.vermeeren@texas-agriculture.gov](mailto:tanya.vermeeren@texas-agriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rules are proposed under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 12.

§26.201. Definitions.

In addition to the definitions set out in Texas Administrative Code, Title 4, Chapter 1, Subchapter A and 7 CFR Parts 210, 215, 220, 225, and 226, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Appellant--A person who files an appeal.
- (2) CFR--Code of Federal Regulations.
- (3) FND--Food and Nutrition Division of the department.
- (4) FND Program--Any of the federal food and nutrition programs administered by FND which include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP).

(5) Notice of action--A letter sent by the department by certified mail, return receipt (or the equivalent private delivery service) or by email that describes an action proposed or taken by the department regarding program reimbursement or participation.

(6) Review official--The administrative law judge who, pursuant to §1.18 of this title (relating to Administrative Law Judges), conducts the appeal on an action before the department.

§26.203. Appeal Procedures.

(a) Who may file. A person, or authorized representative, who has received a notice of action may file an appeal of an action described in §26.202 of this subchapter (relating to Appealable Actions).

(b) Methods of filing. An appeal may be filed by any of the following methods:

- (1) Certified, registered, or standard mail;
- (2) Email;
- (3) Facsimile;
- (4) Courier service; or
- (5) Hand delivery.

(c) Time for filing. An appeal must be filed within the following filing deadlines:

(1) FND Programs except the SFSP and suspension reviews relating to false or fraudulent claims.

(A) Certified, registered, or standard mail: An appeal must be mailed to the department's docket clerk at the mailing address provided in the notice of action within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action. An appeal is considered timely filed if it is postmarked on or before the filing deadline.

(B) Email or facsimile: An appeal must be received by the department's docket clerk at the email address or facsimile number provided in the notice of action within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action. An appeal is considered timely filed if it is electronically transmitted at any time before midnight central time on the filing deadline.

(C) Courier service or hand delivery: An appeal must be delivered to the department at the physical address provided in the notice of appeal within fifteen (15) calendar days of the date of receipt, or deemed receipt, of the notice of action. An appeal is considered timely filed if it is received by the department before the close of business (5:00 p.m. central time) on the filing deadline.

(D) If the filing deadline falls on a Saturday, Sunday, or holidays when the department is closed, then the filing deadline is the next business day. The department is not considered closed on skeleton crew days.

(2) SFSP and Suspension Reviews relating to false or fraudulent claims. The rules for filing an appeal specified in paragraph (1) of this subsection apply to SFSP appeals and suspension reviews relating to false or fraudulent claims, except the time for filing an appeal is within ten (10) calendar days of the date of receipt, or deemed receipt, of the notice of action.

(d) Form of appeal. An appeal must:

(1) be in writing;

(2) state the basis for the appeal and specify the action(s) being appealed;

(3) include a legible copy of the notice of action; and

(4) clearly state which type of appeal the appellant is seeking;

(A) a review of written documentation submitted to the review official; or

(B) a hearing conducted by the review official, which is informal and will be held in Austin, Texas. Failure to specifically request a hearing in the appeal letter shall constitute the appellant's waiver of the right to a hearing. The review official shall deny a request for a hearing submitted after the appeal letter has been received by the department's docket clerk, unless good cause is shown for failure to make a timely request.

(C) The option for a hearing is not available in certain matters and is limited by §26.206 of this subchapter (relating to Abbreviated Appeals).

§26.204. Filing of Documents.

(a) Documents must be filed using one of the filing methods described in §26.203(b) of this subchapter (relating to Appeal Procedures).

(b) To be considered by the review official, written documentation relating to a pending appeal must be filed within the filing deadlines prescribed in this section. The rules relating to the timely filing of an appeal described in §26.203(c) of this subchapter shall apply to the timely filing of written documents.

(c) Parties to an appeal have the right to review any documentary materials submitted for consideration. On the same date a document is filed, the filing party must serve a copy of it on every other party or such party's representative or attorney of record as described in this section.

(d) If the department refers a matter to SOAH, parties to the matter referred must file and serve documents in accordance with SOAH's rules of procedure, Texas Administrative Code, Title 1, Chapter 155.

(e) In all matters, except SFSP appeals and suspension reviews, an appellant must file written materials within thirty (30) calendar days of the appellant's receipt, or deemed receipt, of the notice of action.

(f) In SFSP appeals, an appellant must file written materials within seven (7) calendar days of submitting the appeal.

(g) In Suspension Reviews relating to false or fraudulent claims, an appellant must file written materials within ten (10) calendar

days of the appellant's receipt, or deemed receipt, of the notice of action.

(h) Service to the appellant or its representative shall be made to the appellant or representative's last known mailing address, email address, or facsimile number as shown by the department's records.

(i) Parties and their representatives shall immediately notify the review official and all parties of any change in mailing address, email address, or telephone or facsimile number.

§26.205. Hearing Procedures.

(a) Motions.

(1) Motions in all matters, except in SFSP appeals, shall be filed in writing and served on all parties not less than seven (7) calendar days before the hearing, except for good cause shown. If the non-moving party files a response to the motion, the response must be filed no later than five (5) calendar days after receipt of the motion.

(2) Unless leave is granted by the review official, motions in SFSP appeals may be filed up to forty-eight (48) hours prior to the hearing. If the non-moving party files a response to the motion, the response must be filed within forty-eight (48) hours of the receipt of the motion unless that time is extended or shortened by written order of the review official.

(3) Motions shall set forth the specific grounds for which the moving party seeks the relief requested and shall make reference to all similar motions filed in the proceeding. The review official shall rule on the motion in a timely fashion; however, the review official may defer ruling on a motion until issuance of a final order.

(b) Rules of court. The formal rules of court shall not apply unless necessary for efficient conduct of the hearing.

(c) Evidence.

(1) The parties are not bound by the Texas Rules of Evidence but shall be allowed to make lawful and pertinent objections to proffered evidence or testimony. Evidence will be admitted and given probative effect if it possesses probative value and is relevant as determined by the review official. The review official may limit the testimony of witnesses, or the introduction of documentary evidence, to those matters deemed probative and relevant.

(2) Service of documents on a party shall be made in accordance with §26.204 of this subchapter (relating to Filing of Documents).

§26.207. Standard of Review.

The decision of the review official shall be based on a preponderance of the evidence. The burden of proof shall be on the department to show by a preponderance of the evidence that the action being appealed was taken or proposed in accordance with the program's regulations, rules, policy guidance, and directives.

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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Skyler Shafer

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Texas Department of Agriculture

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## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

##### 16 TAC §25.43

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.43, relating to Provider of Last Resort (POLR). This amended rule will update the POLR formulas for residential, and small and medium commercial customer classes to ensure that POLR rates protect POLR customers from excessive rates while ensuring the POLR providers are not overly exposed to risks associated with taking on unexpected customers following a POLR event.

##### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

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

##### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

##### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

##### Fiscal Impact on State and Local Government

Mariah Benson, Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

##### Public Benefits

Ms. Benson has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of the adoption of the proposed amendments will be increased market competition and increased options for customers when the Electric Reliability Council of Texas (ERCOT) real-time settlement point prices rise above the POLR formula. Ms. Benson has also determined that the proposed section will also ensure that the POLR formula will strike a more appropriate balance between costs paid by POLR customers and risks assumed by POLR providers than the existing rule.

##### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

##### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

##### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

##### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53820.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

##### Statutory Authority

The amended rule is adopted under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, §39.106, which requires that the commission designate providers of last resort.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and §39.106.

§25.43. *Provider of Last Resort (POLR).*

(a) - (i) (No change.)

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

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

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by the 10th of each month [January 1 of each year, and more often if there are changes to the non-bypassable charges]. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.

(4) - (5) (No change.)

(k) - (l) (No change.)

(m) Rates applicable to POLR service.

(1) (No change.)

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class must be determined by the following formula: LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used, where:

(i) (No change.)

(ii) LSP customer charge must be \$0.09 [~~\$0.06~~] per kWh.

(iii) Beginning on the 1st of each month, an LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the 30-day period ending on the 20th day of the preceding calendar month [previous 12-month period ending September 1 of the preceding year] (the historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. The LSP energy charge must not exceed 140% of the preceding month's LSP energy charge multiplied by the cap adjustment factor. The value of the cap adjustment factor is set to 1.0 every calendar year. At any time commission staff can file a recommendation for the commission to set a different cap adjustment factor. A LSP offering POLR service must declare the cap adjustment factor on the EFL. [In no instance may the LSP energy charge exceed 120% of the previous year's LSP energy charge.] The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(iv) (No change.)

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes must be determined by the following formula: LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used, where:

(i) - (iii) (No change.)

(iv) Beginning on the 1st of each month, LSP energy charge must be the average of the actual RTSPPs for the applicable load zone for the 30-day period ending on the 20th day of the preceding calendar month [previous 12-month period ending September 1 of the preceding year] multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. [In no instance may the] The LSP energy charge must not exceed 140% [125%] of the preceding month's [previous year's] LSP energy charge multiplied by the cap adjustment factor. The value of the cap adjustment factor is set to 1.0 every calendar year. At any time commission staff can file a recommendation for the commission to set a different cap adjustment factor. A LSP offering POLR service must declare the cap adjustment factor on the EFL. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(v) (No change.)

(C) Large non-residential customers. The LSP rate for the large non-residential customer class must be determined by the following formula: LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used, where:

(i) - (iv) (No change.)

(3) (No change.)

(4) On a showing of good cause by an affected person, the commission may direct an [permit the] LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow an [the] LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) (No change.)

(n) - (w) (No change.)

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

Filed with the Office of the Secretary of State on September 15, 2022.

TRD-202203711

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 936-7322



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT



The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter A, §§60.1; Subchapter B, §§60.20 - 60.23; Subchapter D, §§60.40 - 60.42; Subchapter F, §§60.80, 60.81, and 60.83; Subchapter G, §§60.100 - 60.102; proposes new rules at Subchapter C, §60.36; Subchapter D, §60.43; and new Subchapter L, §§60.600 and §60.601; and proposes the repeal of existing rules at Subchapter D, §60.36, regarding the Procedural Rules of the Commission and the Department. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department, and other laws applicable to the Commission and the Department.

The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The proposed rules update multiple subchapters and sections under Chapter 60. These changes include: (1) substantive and clean up changes suggested by the General Counsel's Office and during past strategic planning sessions; (2) changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039; and (3) changes as a result of House Bill (HB) 1560, Article 1, Sec. 1.11, 87th Legislature, Regular Session (2021), the Department's Sunset legislation.

The proposed rules are necessary to update the current processes and procedures; to reflect the current authority and responsibilities of the Commission, the Executive Director, and the Department; to clarify and supplement the existing rule provisions; to implement necessary statutory requirements and changes; to promote consistency in terminology; and to reorganize and clean up existing rules where necessary. The Department expects to propose additional changes to Chapter 60 in the future in separate rulemakings.

##### *Substantive and Clean Up Changes*

The proposed rules include substantive and clean up changes suggested by the General Counsel's Office and during past strategic planning sessions. These changes include updates to the rules regarding applicability; general powers and duties of the Department and the Executive Director; license eligibility after revocation; criminal history and license eligibility; charges for providing copies of public information; rulemaking; and Department personnel. The changes also include reorganization of existing rules and clean up changes in terminology. The proposed rules make editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology to be consistent with the statutes and consistent across the Chapter 60 rule subchapters.

##### *Four-Year Rule Review Changes*

The proposed rules include changes as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department conducted the required rule review of the rules under 16 TAC Chapter 60, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021).

posed Rule Review, 46 TexReg 2589, April 16, 2021. Adopted Rule Review, 46 TexReg 4701, July 30, 2021).

In response to the Notice of Intent to Review that was published, the Department received public comments from six interested parties regarding Chapter 60, with two of these interested parties commenting on the criminal history rules under Subchapter D. The two interested parties commented that a person with a criminal history should still be able to obtain a license. The Department did not propose any changes to the rules based on these public comments. The proposed rules provide the license eligibility requirements for persons with criminal histories in accordance with the applicable statutes and the Department's criminal conviction guidelines.

The proposed rules include changes identified by Department staff during the rule review process. These changes are reflected throughout the proposed rules and include updates to the rules regarding Commission meeting procedures; general powers and duties of the Department and the Executive Director; imposing sanctions and penalties; criminal history and license eligibility; fees; and rulemaking. The changes also include clarifying the rules, using plain talk language, and making the same editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology.

##### *Bill Implementation*

The proposed rules include changes as a result of House Bill (HB) 1560, Article 1, Sec. 1.11, 87th Legislature, Regular Session (2021), the Department's Sunset legislation. This section of HB 1560 amended Texas Occupations Code §51.4012(a), License Eligibility Requirements Regarding Applicant's Background; Determination Letter, to remove the "honesty, trustworthiness, or integrity" provision as a factor for license eligibility. The proposed rules implement this section of HB 1560 by repealing the same provision from the rules under Subchapter D.

#### SECTION-BY-SECTION SUMMARY

##### *Subchapter A. General Provisions.*

The proposed rules amend §60.1, Authority. The proposed rules update the title of the section to "Authority and Applicability" to reflect the scope of the rule; clarify the statutory authority under which the rules are promulgated; and explain the interaction between this rule chapter and the statutes and rules of the programs regulated by the Commission and the Department. The proposed rules make editorial changes to "Commission" and "Department" to use lower case terminology.

##### *Subchapter B. Powers and Responsibilities.*

The proposed rules amend §60.20, General Powers and Duties of the Commission. The proposed rules make clean-up changes. The proposed rules make editorial changes to "Commission" and "Department" to use lower case terminology.

The proposed rules amend §60.21, Commission Meetings--Procedures. The proposed rules make clean-up and reorganization changes; add provisions for electronic signatures; and update the provisions regarding providing public comments at the commission meetings. The proposed rules make editorial changes to "Commission" to use lower case terminology.

The proposed rules amend §60.22, General Powers and Duties of the Department and the Executive Director. The proposed rules update the provisions regarding the powers and duties of the Executive Director and the Department; clarify the Executive

Director's duties pursuant to a Governor-issued executive order or proclamation declaring a state of disaster; and make clean-up changes. The proposed rules make editorial changes to "Commission," "Department," and "Executive Director" to use lower case terminology.

The proposed rules amend §60.23, Commission and Executive Director--Imposing Sanctions and Penalties. The proposed rules update the provisions regarding the authority of the Commission and the Executive Director to impose sanctions for violations related to inspections and investigations and related to criminal history and license eligibility; align the rule language with the sanctions authority under Texas Occupations Code §51.353(a) and §51.103(c)(1); and clarify that a combination of sanctions or administrative penalties may be imposed.

#### *Subchapter C. License Applications.*

The proposed rules update the title of Subchapter C to "License Applications and Renewals" to reflect the scope of the subchapter.

The proposed rules add new rule §60.36, License Eligibility After Revocation. Current §60.36 under Subchapter D is being repealed and relocated in part to Subchapter C as new §60.36. Subchapter C includes rule sections in the series §§60.30-60.39, and Subchapter D includes rule sections in the series §§60.40-60.49.

New §60.36 under Subchapter C includes subsections (a) through (c) from current §60.36 under Subchapter D. These provisions address license revocations that are not due to criminal history. This rule implements Texas Occupations Code §51.355, License Eligibility of Person Whose License Has Been Revoked. The statutory reference was added to the proposed rules for clarity. The proposed rules also add language reflecting the Department's insufficient funds fee policy.

#### *Subchapter D. Criminal History and License Eligibility.*

The proposed rules repeal existing rule §60.36, License Eligibility After Denial or Revocation. Current §60.36 under Subchapter D is being repealed, and the provisions are being relocated. Subchapter C includes rule sections in the series §§60.30 - 60.39, and Subchapter D includes rule sections in the series §§60.40 - 60.49.

The subsections of current §60.36 under Subchapter D have been relocated as follows: (1) subsections (a) - (c), which address revocations that are not due to criminal history, have been moved to new §60.36 under Subchapter C; (2) subsection (a), which also applies to revocations due to criminal history, has been copied and added to current §60.40 as new subsection (b) and current §60.41 as new subsection (c); (3) subsection (d) has been moved to current §60.40 as new subsection (c)(2); and (4) subsection (e) has been moved to new §60.43.

The proposed rules amend §60.40, License Eligibility for Persons with Criminal Convictions. Subsection (a) is revised to align the text more closely with the statute, Texas Occupations Code §53.021, Authority to Revoke, Suspend, or Deny License. The provision in new subsection (b) was copied from current §60.36(a) under Subchapter D, and the statutory reference was added for clarity. This rule implements Texas Occupations Code §51.355, License Eligibility of Person Whose License Has Been Revoked, as it relates to revocations based on criminal history.

Current subsection (b) is re-lettered as new subsection (c) with a new heading and organization. The incarceration provisions

are grouped together under subsection (c). Existing subsection (c)(1) prohibits a person who is currently incarcerated from obtaining or renewing a license issued by the Department. The provision in new subsection (c)(2), which was relocated from §60.36(d) under Subchapter D, requires a person whose license was revoked by operation of law under Occupations Code §53.021(b) for imprisonment after a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, to wait until release from imprisonment to apply for a license issued by the Department. New subsection (c)(3) adds an exception to these provisions for certain student permits issued to persons enrolled in the Windham School District, which is a school district operated by the Texas Department of Criminal Justice for incarcerated persons. The provisions in subsection (c)(3) are necessary to allow incarcerated persons to attend barbering or cosmetology school while in prison and to accumulate educational hours towards licenses issued in the barbering and cosmetology program. These permits do not permit students to practice barbering or cosmetology outside of a licensed school setting.

The proposed rules amend §60.41, License Eligibility for Persons with Deferred Adjudications or Non-Conviction Activities. The proposed rules update the title of the section to "License Eligibility for Persons with Deferred Adjudications or Other Criminal History" to reflect the changes in the section. The proposed rules amend subsection (a) to add the statutory reference to Texas Occupations Code §51.356, Deferred Adjudication; License Suspension, License Revocation, or Denial or Refusal to Renew License, for clarity and to make other clean-up changes.

The proposed rules amend subsection (b) to add the statutory reference to Texas Occupations Code §51.4012(a), License Eligibility Requirements Regarding Applicant's Background; Determination Letter, for clarity and to implement HB 1560, Article 1, Section 1.11. HB 1560 amended Texas Occupations Code §51.4012(a) to remove the "honesty, trustworthiness, or integrity" provision as a factor for license eligibility, along with other editorial changes. The proposed rules make the same changes to the rules.

The provision in new subsection (c) was copied from current §60.36(a) under Subchapter D, and the statutory reference was added for clarity. This rule implements Texas Occupations Code §51.355, License Eligibility of Person Whose License Has Been Revoked, as it relates to revocations based on criminal history.

The proposed rules amend §60.42, Criminal History Evaluation Letters. The proposed rules update subsection (b) to implement HB 1560, Article 1, Sec. 1.11. HB 1560 amended Texas Occupations Code §51.4012(a) to remove the "honesty, trustworthiness, or integrity" provision as a factor for license eligibility, along with other editorial changes. The proposed rules make the same changes to the rules. The proposed rules also clean up a statutory reference in subsection (h).

The proposed rules add new rule §60.43, License Denial or Revocation for Certain Health Professionals with a Criminal History. The provisions in this new section were moved from current §60.36(e) under Subchapter D. The existing provisions have been supplemented. This section implements Texas Occupations Code, Chapter 108, Subchapter B, Automatic Denial or Revocation of Health Care Professional License, for the specified health-related programs.

#### *Subchapter F. Fees.*

The proposed rules amend §60.80, Program Fees. The proposed rules clarify the existing language regarding program fees. The proposed rules make editorial changes to "Commission" and "Department" to use lower case terminology.

The proposed rules amend §60.81, Charges for Providing Copies of Public Information. The proposed rules adopt by reference the Office of the Attorney General rules regarding charges for copies of public information and update the rule citations.

The proposed rules amend §60.83, Late Renewal Fees. The proposed rules add clarifying language to the existing provisions regarding renewal fees and late renewal fees. The proposed rules also restructure and plain talk the language under subsection (c). This rule implements Texas Occupations Code §51.401, License Expiration and Renewal.

#### *Subchapter G. Rulemaking.*

The proposed rules amend §60.100, Rulemaking. The proposed rules clean up a statutory reference and make editorial changes to "Commission" and "Department" to use lower case terminology.

The proposed rules amend §60.101, Negotiated Rulemaking. The proposed rules make editorial changes to "Commission" and "Department" to use lower case terminology.

The proposed rules amend §60.102, Petition for Adoption of Rules. The proposed rules provide additional details regarding rulemaking petitions submitted to the Department under Texas Government Code §2001.021, Petition for Adoption of Rules. These provisions include: who is an "interested person" as defined under the statute and rules; what information must be provided for a rulemaking petition to be considered; the reasons why a rulemaking petition will be denied; where and how the rulemaking petition shall be submitted to the Department; the Department's responsibilities in responding to a rulemaking petition; and the handling of repetitive rulemaking petitions.

#### *Subchapter L. Department Personnel.*

The proposed rules add new Subchapter L, Department Personnel. This new subchapter includes personnel-related rules that are required by statute.

The proposed rules add new §60.600, Department Employee Training and Education. This new rule implements Texas Government Code, Chapter 656, Subchapter C, Training, and is required by Texas Government Code §656.048, Rules Relating to Training and Education. This rule addresses training and education programs for Department employees; the tuition reimbursement program; training with extended absence from job duties; and the payment of costs and expenses for approved training. The rule incorporates by reference the Department's personnel manual.

The proposed rules add new §60.601, Department Sick Leave Pool. This new rule implements Texas Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool, and is required by Texas Government Code §661.002, Sick Leave Pool. This rule provides that the Department's sick leave pool shall be administered by the Executive Director and that the Executive Director shall develop and prescribe policies and procedures for the operation of the sick leave pool and include those policies and procedures in the Department's personnel manual.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments or local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be having procedural rules that are more comprehensive and that give applicants, licensees, and the public a better understanding of their rights and responsibilities with the Department and what to expect when interacting with the Commission and the Department. The proposed rule changes further explain the Department's authority, and allow applicants and licensees who have criminal histories to be better aware of the statutory requirements on the Department, and of its procedures, regarding denying applications and revoking licenses of those individuals. The proposed rules provide additional details to the public about Commission meeting procedures, providing public comments at Commission meetings, and submitting rulemaking petitions to the Department.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The changes made by the proposed rules clean up rule language and terms, reorganize the rules, clarify existing rules, and establish in rule current department policy, none of which create a probable economic cost to any person.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

The proposed rules add new rules regarding TDLR employee training and education and TDLR's sick leave pool as required by statute. The proposed rules relocate an existing rule and create an expanded new rule for license denials and revocations for certain health professionals with criminal histories.

The proposed rules expand existing regulations by adding language that makes clear the rules' applicability to each program regulated by the Department; making additions to the procedures for Commission meetings and detailing the procedures for addressing the Commission; clarifying the Executive Director's authority to implement the Governor's executive orders and proclamations; broadening the Commission and Executive Director's authority for imposing sanctions and penalties to include violations committed during an inspection or investigation; adding language to clarify the Commission's and Executive Director's authority related to applicants with criminal convictions or criminal histories; and listing the requirements for a petition for adoption of rules.

The proposed rules repeal the "honesty, trustworthiness, or integrity" provision in the rules to implement HB 1560, Sec. 1.11, the Department's Sunset legislation.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §60.1

##### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

*§60.1. Authority and Applicability.*

(a) This chapter is promulgated under the authority of Texas Occupations Code, Chapter 51 and other state laws applicable to state agencies. [This chapter applies except in the event of a conflict with other statutory provisions related to specific programs regulated by the Commission and the Department.]

(b) This chapter applies to each program regulated by the commission and the department. The provisions of this chapter are in addition to all other statutes and rules that apply to a specific program. The provisions of this chapter apply except in the event of a conflict with specific statutes and rules governing a specific program.

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 September 16, 2022.

TRD-202203725

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 475-4879



## SUBCHAPTER B. POWERS AND RESPONSIBILITIES

### 16 TAC §§60.20 - 60.23

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture

Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

*§60.20. General Powers and Duties of the Commission.*

(a) The commission [~~Commission~~] shall have primary responsibility for policy-making activities including but not limited to:

- (1) setting fees;
- (2) adopting rules;
- (3) imposing sanctions and penalties; and
- (4) issuing final orders in contested cases.

(b) The commission [~~Commission~~] shall have the sole responsibility for the adoption of rules proposed by the department [~~Department~~] or the commission [~~Commission~~].

(c) The commission [~~Commission~~] shall provide reasonable accommodations, as required by the Americans with Disabilities Act of 1990, Public Law 101-336 and any subsequent amendments, for the public to participate in the programs regulated by the department [~~Department~~].

(d) Upon request, the commission [~~Commission~~] shall provide reasonable access to persons who do not speak English to the programs regulated by the department [~~Department~~].

*§60.21. Commission Meetings--Procedures.*

(a) Every regular, special, or called meeting of the commission shall be announced and conducted in accordance with [~~Commission~~] shall be open to the public as provided by the] Texas Government Code,

Chapter 551, [~~the~~] Open Meetings Act[~~l~~]. These meetings shall be open to the public as provided by the Open Meetings Act.

(b) Meetings will be conducted according to the current edition of *Robert's Rules of Order Newly Revised* in all instances to which they are applicable as long as they are not inconsistent with the Texas Constitution or the statutes or rules applicable to the commission [~~constitution, the statutes and the rules of the Commission~~]. Any *Robert's Rules of Order Newly Revised* may be modified as deemed necessary by the presiding officer for the proper conduct of the meeting subject to an objection by a commission [~~Commission~~] member.

(c) A quorum of [~~for~~] the commission [~~Commission~~] is four members, which is a majority of all the members of the commission [~~Commission~~] as designated by statute. When a quorum is present, a motion before the commission [~~Commission~~] is carried by an affirmative vote of the majority of the commission [~~Commissioner~~] members present that are participating in the vote.

(d) As a member of the commission, the presiding officer may make motions without the necessity of relinquishing the chair subject to an objection from a commission member.

(e) The department staff may use the commissioners' electronic signatures on written orders and decisions for actions taken during the commission meeting, unless otherwise directed.

(f) [~~(d)~~] The presiding officer may limit the number and length of comments provided on any item on the agenda subject to an objection from a commission [~~Commission~~] member.

[~~(e)~~] As a member of the Commission, the presiding officer may make motions without the necessity of relinquishing the chair subject to an objection from a Commission member.

(g) [~~(f)~~] The commission [~~Commission~~] shall provide the public with a reasonable opportunity to address [~~appear before~~] the commission [~~Commission and to speak~~] on issues [~~any issue~~] under the commission's [~~Commission's~~] jurisdiction.

(1) A person who wants [~~Persons wishing~~] to speak during [~~at~~] a commission [~~Commission~~] meeting must register in accordance with the commission meeting instructions. [~~may sign in at the beginning of the meeting and~~] The person may speak during the public comment portion of the meeting, or, at the discretion of the presiding officer, during the discussion of a specific agenda item.

(2) The commission or the department may provide instructions regarding the presentation of public comments during a commission meeting.

§60.22. *General Powers and Duties of the Department and the Executive Director.*

(a) The executive director [~~Executive Director~~] shall have primary responsibility to manage the operations and administration of the department [~~Department~~] and its programs as provided by Texas Occupations Code, Chapter 51 and other applicable law, including but not limited to:

- (1) issuing and renewing licenses;
- (2) resolving complaints;
- (3) conducting investigations and inspections;
- (4) imposing [~~agreed order~~] sanctions and administrative penalties for agreed orders and default orders; and
- (5) approving, administering, or providing for the administration of exams.

(b) The executive director [~~Executive Director~~] may approve agreed orders and default orders in contested cases and shall have authority to issue other orders as provided by law or as delegated by the commission [~~Commission~~].

(c) The department [~~Executive Director~~] may propose rules for publication in the *Texas Register* as delegated by the commission [~~Commission~~].

(d) The executive director [~~Executive Director~~] may implement any executive [~~emergency~~] orders or proclamations declaring a state of disaster issued by the governor [~~Governor~~] under Texas Government Code, Chapter 418, to suspend or amend existing statutes and rules.

(1) The executive director [~~Executive Director~~] will notify the commission [~~Commission~~] of the department's [~~Department's~~] actions to comply with the governor's [~~Governor's~~] executive [~~emergency~~] orders or proclamations.

(2) The executive director and the department will implement the governor's executive orders or proclamations within the existing authority of Texas Occupations Code, Chapter 51, the rules in this chapter, and the laws and rules of the programs regulated by the commission and the department.

(e) For any license that expires during a state of disaster declared by the governor under Texas Government Code, Chapter 418, or the following recovery period, the executive director [~~Executive Director~~] may issue to the license holder an emergency license under Texas Occupations Code §51.408. The executive director [~~Executive Director~~] may implement policies as necessary to administer this subsection. The holder of an emergency license issued under this subsection is not required to post or display the emergency license.

§60.23. *Commission and Executive Director--Imposing Sanctions and Penalties.*

(a) The commission or executive director may sanction a license holder, applicant, or other person, if the person:

- (1) obtains or attempts to obtain a license by fraud or false representation;
- (2) falsifies any document submitted to the department or commission;
- (3) refuses to permit or fails to cooperate in an inspection or investigation; [~~or~~] interferes with an inspection or investigation conducted by an authorized representative of the commission or department; or threatens or intimidates an authorized representative of the commission or department in connection with an inspection or investigation;
- (4) permits the use or display of a license by a person not authorized by law to use that license;
- (5) has a conviction, a deferred adjudication, or other criminal history that affects license eligibility as prescribed under Subchapter D [~~has been convicted of, or placed on deferred adjudication for, an offense identified in Texas Occupations Code, §53.021(a)~~]; or
- (6) violates Texas Occupations Code, Chapter 51, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive director [~~department~~].

(b) The commission or executive director may:

- (1) issue a written reprimand;
- (2) revoke, suspend, or deny the person's license;

(3) place on probation a person whose license has been suspended or revoked;

(4) issue a restricted license to the person in accordance with Texas Occupations Code, Chapter 51, Subchapter G;

(5) refuse to renew the person's license; [or]

(6) impose administrative penalties against the person after considering the factors set forth in Texas Occupations Code[.] §51.302(b); or [-]

(7) take any combination of actions under paragraphs (1) - (6).

(c) If the suspension or revocation of a license is probated, the commission or executive director may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission or executive director;

(3) complete professional education until the person attains a degree of skill satisfactory to the commission or executive director in those areas that are the basis for the probation; or

(4) complete any other remedial actions agreed to by the parties.

(d) If a person has outstanding administrative penalties, the department may place a hold on the person's license and the person may not renew the license until the administrative penalties are paid.

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



## SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

### 16 TAC §60.36

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Boating); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

#### §60.36. License Eligibility After Revocation.

(a) Except as provided by subsection (b), Subchapter D, or other law, and pursuant to Texas Occupations Code §51.355, a person whose license is revoked by order of the commission or the executive director must wait one year from the date of revocation before applying for a new license.

(b) A person whose license has been revoked solely because of a failure to pay an administrative penalty or due to an outstanding insufficient funds fee may apply for a new license at any time if the person either:

(1) has paid the administrative penalty or the outstanding insufficient funds fee in full; or

(2) is paying the administrative penalty under a payment plan with the department and is in good standing with respect to that plan.

(c) For purposes of subsection (b), a person is in good standing with respect to a payment plan if, at the time of application, the person is current on the payment plan and has made timely payments on the plan for the preceding two months.

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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Brad Bowman

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## SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

### 16 TAC §60.36

#### STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed repeal is proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451

(Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed repeal.

*§60.36. License Eligibility After Denial or Revocation.*

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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Brad Bowman

General Counsel

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### 16 TAC §§60.40 - 60.43

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.



The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

*§60.40. License Eligibility for Persons with Criminal Convictions.*

(a) Texas Occupations Code, Chapter 53 provides that the commission or executive director may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination [~~be examined for a license~~] if the person has been convicted of an offense listed under §53.021(a) or has a deferred adjudication that qualifies as a conviction under §53.021(d). Any such action shall be made after consideration of the factors listed in Texas Occupations Code[;] §53.022 and §53.023 and the guidelines issued by the department under §53.025.

(b) Pursuant to Texas Occupations Code §51.355, a person whose license is revoked by order of the commission or the executive director based on the person's criminal history must wait one year from the date of revocation before applying for a new license.

(c) ~~[(b)]~~ Provisions Related to Persons Who are Incarcerated or Imprisoned.

(1) A person who is incarcerated because of a felony conviction is not eligible to obtain a license or renew a previously issued license under this chapter or any statute governing a program regulated by the department.

(2) A person whose license is revoked by operation of law pursuant to Texas Occupations Code §53.021(b) must wait until release from imprisonment before applying for a new license.

(3) This subsection does not apply to the issuance of a student permit under Texas Occupations Code, Chapter 1603, to a person enrolled in a school administered by the Windham School District or the Texas Department of Criminal Justice.

*§60.41. License Eligibility for Persons with Deferred Adjudications or Other Criminal History [Non-Conviction Activities].*

(a) Pursuant to Texas Occupations Code §51.356, the [The] commission may ~~deny~~, suspend, [~~deny~~,] revoke, or refuse to renew a license, if the commission determines a deferred adjudication as specified under §51.356 makes the applicant or license holder [~~licensee~~] unfit for the license. In making this determination, the commission shall consider the factors set forth in Texas Occupations Code §53.022 and §53.023 and the guidelines issued by the department under §53.025.

(b) Pursuant to Texas Occupations Code §51.4012(a), the [The] commission may determine a person is not eligible [~~ineligible~~] for a license based on the person's criminal history [~~or other information that indicates lack of honesty, trustworthiness, or integrity to hold a license~~].

(c) Pursuant to Texas Occupations Code §51.355, a person whose license is revoked by order of the commission or the executive director based on the person's criminal history must wait one year from the date of revocation before applying for a new license.

*§60.42. Criminal History Evaluation Letters.*

(a) Pursuant to Texas Occupations Code Chapter 51, §51.4012 and Chapter 53, Subchapter D, a person may request the department issue a criminal history evaluation letter regarding the person's eligibility for a specific occupational license regulated by the department.

(b) A person may request the department issue an evaluation letter regarding whether the person may be eligible for a license if the person has a conviction or deferred adjudication for a felony or misdemeanor offense[; or if there is other information that indicates that the person may lack the honesty, trustworthiness or integrity to hold a license issued by the department].

(c) To request an evaluation letter, the person must:

(1) submit the request using a department-approved form; and

(2) pay the required fee of \$10.

(d) A person must submit a separate evaluation letter request and fee for each specific occupational license in which the department will evaluate the person's eligibility.

(e) An evaluation request is not considered to be a complete request until all required information is received. No evaluation letter will be issued for an incomplete request. The entire process from receipt of the completed request to the issuance of an evaluation letter will not exceed 90 days.

(f) The department will issue an evaluation letter in response to each criminal history evaluation letter request. The evaluation letter will state the department's determination on each ground of potential ineligibility.

(g) The department is not bound by its determination if:

(1) the requestor fails to disclose known information that is relevant to the evaluation; or

(2) there is a change in the person's circumstances after the evaluation letter is issued.

(h) The department's determination is not a contested case under Texas Government Code, Chapter 2001, and the determination may not be appealed. The department's determination does not prohibit or prevent a person from enrolling or attending an educational program, taking a licensing examination, or applying for a license.

§60.43. License Denial or Revocation for Certain Health Professionals with a Criminal History.

(a) This section applies to a "health professional" as defined under Texas Occupations Code, Chapter 108, Subchapter B, and who is regulated by the commission and the department. This section applies to the licenses and permits issued under the following programs:

- (1) hearing instrument fitters and dispensers;
- (2) podiatrists; and
- (3) speech-language pathologists and audiologists.

(b) The department shall deny an application for a license as a health care professional under this section, and shall revoke the license of a health care professional under this section, based on the person's criminal history and the requirements set out under Texas Occupations Code, Chapter 108, Subchapter B.

(c) A person whose application for licensure as a health care professional under this section has been denied, or whose license as a health care professional under this section has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B, may reapply or seek reinstatement as provided by that subchapter.

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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Brad Bowman

General Counsel

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## SUBCHAPTER F. FEES

### 16 TAC §§60.80, 60.81, 60.83

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009,

and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

#### §60.80. Program Fees.

(a) Most program fees set by the commission are published in the rule chapters for the specific programs regulated by the commission and the department. [Most fees set by the Commission are published in the rules relating to the statutes assigned to the Department.] These program fees may include fees for initial applications, renewals, duplicate licenses, examinations, and any other fees specific to a particular program.

(b) All program fees are non-refundable unless determined or stated otherwise.

#### §60.81. Charges for Providing Copies of Public Information.

In accordance with Texas Government Code §552.262, the commission adopts by reference the rules of the Office of the Attorney General as published in 1 TAC Part 3, Chapter 70, §§70.1 - 70.13 for determining charges for copies of public information under Texas Government Code, Chapter 552, Subchapter F. [In providing public information the Department adheres to the standards for cost of copies as adopted under 1 TAC Part 3, Chapter 70, §§70.1 - 70.12.]

#### §60.83. Late Renewal Fees.

(a) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the renewal fee required for the license as prescribed in the program rules.

(b) A person whose license has been expired for more than 90 days but less than 18 months may renew the license by paying a late renewal fee equal to two times the renewal fee required for the license as prescribed in the program rules.

(c) A person whose license has been expired for more than 18 months but less than three years may request that the executive director approve the license renewal by:

(1) submitting information sufficient to explain the need [show just cause] for the late renewal; and

(2) paying to the department a renewal fee equal to two times the [normally required] renewal fee required for the license as prescribed in the program rules.

(d) A person paying a late renewal fee is not required to pay the late renewal fee in addition to the [late] renewal fee required for the license as prescribed in the program rules. The person is only required to pay the late renewal fee.

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 September 16, 2022.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



## SUBCHAPTER G. RULEMAKING

### 16 TAC §§60.100 - 60.102

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the

program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Boating); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

#### *§60.100. Rulemaking.*

The commission [Commission] and the department [Department] will follow the rulemaking procedures established in the Administrative Procedure [Procedures] Act (Texas Government Code, Chapter 2001), except when §60.101 of this subchapter is applicable.

#### *§60.101. Negotiated Rulemaking.*

(a) It is the commission's [Commission's] policy to engage in negotiated rulemaking procedures under Texas Government Code, Chapter 2008, when appropriate. When the commission [Commission] finds that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the commission [Commission] will appoint a convener to assist in determining whether it is advisable to proceed. The convener shall perform the duties and responsibilities contained in Texas Government Code, Chapter 2008.

(c) If the convener recommends proceeding with negotiated rulemaking and the commission [Commission] adopts the recommendation, the department [Department] shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

#### *§60.102. Petition for Adoption of Rules.*

(a) In accordance with Texas Government Code §2001.021, any interested person may request that a rule be adopted, amended, or

repealed by submitting a written petition for rulemaking to the department (rulemaking petition).

(b) An interested person, as defined by Texas Government Code §2001.021, must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state; or
- (4) a public or private organization located in this state that is not a state agency.

(c) The written rulemaking petition must include:

- (1) the person's full name, mailing address, telephone number, and email address;
- (2) a statement explaining how the person qualifies as an "interested person" as explained under subsection (b);
- (3) a summary and explanation of the draft rule change;
- (4) the rationale and justification for the draft rule change or the reasons why the person believes the rulemaking is necessary;
- (5) a statement addressing whether there would be a cost to anyone impacted by the draft rule change, if the cost information is known or readily available;
- (6) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted, with the new text underlined; and
- (7) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(d) A rulemaking petition will be denied if:

- (1) it is submitted by a person who does not qualify as an "interested person"; or
- (2) it does not contain the required information listed under subsection (c).

(e) The rulemaking petition must be submitted electronically on the department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name); by facsimile to (512) 475-3032; or by mail to Office of the General Counsel, ATTN: Rules Coordinator, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

(f) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the executive director or the executive director's designee shall review the petition and shall respond in writing either:

- (1) denying the petition and stating the reasons for the denial; or
- (2) informing the petitioner that the department will initiate a rulemaking proceeding under Texas Government Code, Chapter 2001.

(g) Repetitive Petitions. The executive director may deny a rulemaking petition if, within the preceding year, the executive director or the executive director's designee has considered a previously submitted petition for the same rule.

[(a) Any interested person may request adoption of a rule(s) by submitting a letter of request to the department with a draft of the rule(s) attached. At a minimum the request should contain:]

[(1) items to be deleted bracketed or lined through;]

[(2) items added underlined; and]

[(3) the rationale for the requested rule change.]

[(b) For purposes of this section, the term "interested person" shall have the meaning given in Government Code, §2001.021.]

[(e) The department shall respond to a letter of request for adoption of a rule in accordance with Government Code, §2001.021.]

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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## SUBCHAPTER L. DEPARTMENT PERSONNEL

### 16 TAC §60.600, §60.601

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules also are proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

In addition, the proposed rules are proposed under the authority of other state laws that apply to state agencies. These laws include Texas Occupations Code, Chapters 55 and 108 (Subchapter B); Texas Government Code, Chapters 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code Chapters 231 and 232.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all the Department programs: Agriculture Code, Chapter 301 (Weather Modification and Control); Business and Commerce Code, Chapter 607 (Motor Fuel Metering and Quality); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and

Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 and 2312 (Motor Fuel Metering and Quality); and 2402 (Transportation Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

In addition, the statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 53, 55, and 108 (Subchapter B); Texas Government Code, Chapters 411 (Subchapter F), 551, 552, 656 (Subchapter C), 661 (Subchapter A), 2001, 2005, 2008, 2009, and 2110; Civil Practice and Remedies Code, Chapter 154; and Family Code, Chapters 231 and 232. No other statutes, articles, or codes are affected by the proposed rules.

§60.600. Department Employee Training and Education.

(a) Pursuant to Texas Government Code, Chapter 656, Subchapter C (the State Employees Training Act), department employees may be permitted or required to attend training or education programs if those programs relate to the employee's duties or prospective duties, materially aid effective administration of the department's functions, and serve an important public purpose.

(b) Training and Education Programs.

(1) The department may provide training or education for an employee if the employee's supervisor determines that the employee and the specific training or education program meet the eligibility criteria included in the department's personnel manual.

(2) Employees who receive training or education must utilize the training or education to prepare for technological and legal developments facing the department, or to increase professional capabilities and competence directly related to the work of the department.

(c) Tuition Reimbursement Program.

(1) The department has established a Tuition Reimbursement Program as authorized under Texas Government Code §656.047(b). This program applies to a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Texas Education Code §61.003.

(2) The department may reimburse a full-time regular employee for tuition expenses if the employee meets the eligibility criteria and the employee obligations included in the department's personnel manual. The department may only pay the tuition expenses for a program course successfully completed by an employee at an accredited institution of higher education.

(3) An employee seeking tuition reimbursement must submit a request for reimbursement in accordance with the department's personnel manual. The executive director must authorize the tuition reimbursement payment before an employee may be reimbursed under Texas Government Code §656.047(b).

(d) Training with Extended Absence from Job Duties.

(1) If an employee receives training that will be paid for by the department, and during which the employee will not be performing the employee's regular duties for three months or more, the employee, prior to receiving the training, must enter into a written agreement with the department to comply with the requirements of Texas Government Code §656.103(a).

(2) An employee who fails or refuses to enter into such an agreement shall not be permitted to attend training lasting three or more months.

(3) In addition to the written agreement, an employee must meet the eligibility criteria and the employee obligations included in the department's personnel manual.

(e) The department shall pay the costs and expenses related to any approved training under this section in accordance with the Texas Government Code, Chapter 656, Subchapter C; the Comptroller's rules and regulations; and the department's policies relating to employee reimbursement included in the department's personnel manual.

§60.601. Department Sick Leave Pool.

(a) Pursuant to Texas Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool, the department has established a sick leave pool to assist employees and their immediate families in dealing with catastrophic illness or injury that forces them to exhaust all accrued sick leave.

(b) The department's sick leave pool shall be administered by the executive director in accordance with Texas Government Code, Chapter 661, Subchapter A; the Texas Human Resources Statutes Inventory Manual and the Sick Leave Guide published by the Texas State Auditor's Office; and any other applicable laws and regulations.

(c) The executive director shall develop and prescribe policies and procedures for the operation of the sick leave pool and include those policies and procedures in the department's personnel manual.

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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Brad Bowman  
General Counsel

Texas Department of Licensing and Regulation  
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## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.2, concerning licensure by examination for dentists. The proposed amendment updates the language to clarify that clinical examinations must use live

patients or hands-on simulations. The amendment reflects the merger of the regional examining board CDCA-WREB-CITA, and the name change of the regional examining board SRTA. The amendment also changes the time period the Board will accept examination results.

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

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

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

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

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

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

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are affected by this proposed rule.

#### §101.2. *Licensure by Examination.*

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

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

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

(3) Has taken and passed the appropriate general dentistry live patient or hands-on simulation clinical examination administered by a regional examining board designated by the Board.

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

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

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

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

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

(c) Designated regional examining boards.

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

(A) The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), August 1, 2022; [~~Western Regional Examining Board, January 1, 1994;~~]

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

~~[(C) The Commission on Dental Competency Assessments, January 9, 2015;]~~

(C) ~~[(D)] States Resources for Testing and Assessments (SRTA), [Southern Regional Testing Agency,] January 1, 2005.;~~ and]

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

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

(d) Remediation.

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

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

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

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

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

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

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

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

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TRD-202203778

Lauren Studdard

General Counsel

State Board of Dental Examiners

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



## 22 TAC §101.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.3, concerning dental licensure by credentials. The proposed amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations.

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

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

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

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

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

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

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are affected by this proposed rule.

### §101.3. Licensure by Credentials.

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

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

(2) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry live patient or hands-on simulation clinical examination administered by another state or regional examining board;

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board, pursuant to section 256.101(a-1) of the Dental Practice Act; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

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

(6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds) and has completed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a CODA-accredited dental school.

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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Lauren Studdard  
General Counsel

State Board of Dental Examiners

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## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.2, concerning licensure by examination for dental hygienists. The proposed amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations. The amendment reflects the merger of the regional examining board CDCA-WREB-CITA, and the name change of the regional examining board SRTA. The amendment also changes the time period the Board will accept examination results.

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

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

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

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no

economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

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

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

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are affected by this proposed rule.

#### §103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed the appropriate live patient or hands-on simulation clinical examination administered by a regional examining board designated by the Board.

(b) Designated regional examining boards.

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

(A) The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), August 1, 2022; [~~(A) Western Regional Examining Board, January 1, 1994;~~]

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

~~[(C) The Commission on Dental Competency Assessments, January 9, 2015;]~~

(C) [~~(D)~~] States Resources for Testing and Assessments (SRTA), Southern Regional Testing Agency January 1, 2005; [~~]; and]~~

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



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

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene live patient or hands-on simulation clinical examination attempts, the applicant must complete 40 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another live patient or hands-on simulation clinical examination.

(2) If an applicant fails four or more dental hygiene live patient or hands-on simulation clinical examination attempts, the applicant must complete 150 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another live patient or hands-on simulation clinical examination.

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

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

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 September 19, 2022.

TRD-202203780

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 30, 2022

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



## 22 TAC §103.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.3, concerning dental hygiene licensure by credentials. The proposed amendment updates the language to clarify that clinical examinations must use live patients or hands-on simulations.

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

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

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

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

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

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

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

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

No statutes are affected by this proposed rule.

### §103.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed as a dentist or dental hygienist in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene live patient or hands-on simulation clinical examination administered by another state or regional examining board;

(2) Has practiced dentistry or dental hygiene:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(3) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action.

(b) Practice experience described in subsection (a)(2) of this section must be subsequent to applicant having graduated from a CODA-accredited dental or dental hygiene school.

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 September 19, 2022.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

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



## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

#### SUBCHAPTER B. LICENSING REQUIREMENTS

##### 22 TAC §463.8

The Texas Behavioral Health Executive Council proposes amendments to §463.8, relating to Licensed Psychological Associate.

**Overview and Explanation of the Proposed Rule.** The proposed amendments correct typographical errors in subsections (a)(3), (b)(3), and (c)(3). The proposed amendment to subsection (a)(2) will allow for the supervised experience from an internship, practicum, or the like to count towards licensure if it is obtained under an individual licensed as both an LSSP and an LPA, instead of only under the supervision of a psychologist. Subsection (c)(5) has been amended to allow a provisionally licensed psychologist to count supervision hours obtained towards the independent practice requirements as an LPA. Subsection (d) has been deleted to correspond with the proposed change to §463.11, which deletes the gap requirements for when supervised experience was obtained and when an application was submitted. Subsection (f) extends a grandfathering provision for degrees in psychology that began before August 31, 2019. And subsection (g) creates a way for applicants with deficiencies to petition for permission to remediate certain areas of deficiency.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or

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

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas

78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§463.8. Licensed Psychological Associate.*

(a) Licensure Requirements. An applicant for licensure as a psychological associate must:

(1) hold a graduate degree in psychology from a regionally accredited institution of higher education;

(2) provide documentation of at least six (6) semester credit hours of practicum, internship or other structured experience within the applicant's graduate degree program under the supervision of a licensed psychologist or under the supervision of an individual that holds both a license as a specialist in school psychology and a license as a psychological associate;

(3) pass all examinations required by the Council and meet each of the criteria listed in §501.2525(a)(2)(3)-(9) of the Occupations Code; and

(4) demonstrate graduate level coursework in each of the following areas:

(A) Psychological Foundations:

- (i) the biological bases of behavior;
- (ii) the acquired or learned bases of behavior, including learning, thinking, memory, motivation and emotion;
- (iii) the social, cultural, and systemic bases of behavior;
- (iv) the individual or unique bases of behavior, including personality theory, human development, and abnormal behavior;

(B) Research and Statistics:

- (i) the methodology used to investigate questions and acquire knowledge in the practice of psychology;
- (ii) coursework in research design and methodology, statistics, critical thinking, and scientific inquiry;

(C) Applied Psychology:

- (i) the history, theory, and application of psychological principles;
- (ii) the application of psychological theories to individuals, families, and groups;

(D) Assessment:

- (i) intellectual, personality, cognitive, physical, and emotional abilities, skills, interests, and aptitudes;
- (ii) socio-economic, including behavioral, adaptive, and cultural assessment;

(E) Interventions:

- (i) the application of therapeutic techniques;
- (ii) behavior management;
- (iii) consultation; and

(F) Scientific and Professional, Legal, and Ethical Issues.

(b) Degree Requirements.

(1) For purposes of this rule:

(A) a graduate degree in psychology means the name of the candidate's major or program of studies contains the term "psychology;"

(B) a specialist degree shall be treated as a graduate degree; and

(C) one semester credit hour equals one and one-half quarter credit hours.

(2) A degree utilized to meet the requirements of this rule must consist of at least sixty (60) semester credit hours, with no more than twelve (12) semester credit hours of practicum, internship, or structured experience being counted toward the total degree hour requirement.

(3) Applicants must demonstrate proof of the graduate level coursework required in subsection (a)(2) and (a)(4) of this section by identifying which courses or training listed on their transcripts satisfy the required areas of study. Applicants may be required to provide the Council with an official course catalogue or description from their university or training program to verify whether a course meets the requirements of this rule.

(c) Supervision Requirements.

(1) A licensed psychological associate must practice under the supervision of a licensed psychologist and may not practice independently.

(2) Notwithstanding paragraph (1) of this subsection and subject to the limitations set out in paragraph (3) of this subsection, a licensed psychological associate may practice independently if:

(A) the licensee can demonstrate at least 3,000 hours of post-graduate degree experience in the delivery of psychological services under the supervision of one or more licensed psychologists;

(B) the supervised experience was obtained in not less than 24 consecutive months, but not more than 48 consecutive months, and in not more than three placements; and

(C) the licensee submits an application for independent practice evidencing proof of the required supervised experience.

(3) A licensed psychological associate meeting the requirements of paragraph (2) of this subsection shall be approved for independent practice, but remains subject to all Council rules, including Council rule §465.9 (relating to Competency).

(4) Applicants shall not utilize any supervised experience obtained from a psychologist with a restricted license or to whom they are related within the second degree of affinity or consanguinity to satisfy the requirements of this rule.

(5) Applicants licensed as specialists in school psychology or as a provisionally licensed psychologist may utilize experience acquired under that license if the experience was supervised by a licensed psychologist.

~~[(d) Notwithstanding subsection (e)(3) of this section, an application for independent practice may be denied if a gap of more than two years exists between the completion of the supervised experience required for independent practice and the date of application for independent practice. The rules governing the waiver of gaps related to supervised experience found in Council rule §463.11 shall govern any request for a waiver under this rule.]~~

~~(d) [(e)]~~ The correct title for a person licensed under this rule shall be "licensed psychological associate" or "psychological associate."

~~(e) [(f)]~~ A licensed psychological associate authorized to practice independently under this rule must inform all patients and clients as part of the informed consent process, whether the licensee holds a master's, specialist or doctoral degree, and provide the patient with a current copy of any informational pamphlet or brochure published by the Council describing the differences between the levels of training and education received in master's, specialist, and doctoral degree programs. In lieu of providing each patient or client with a copy of the required pamphlet or brochure, licensees may publish in a conspicuous manner, the pamphlet or brochure on their website or provide a link to the pamphlet or brochure on the Council's website.

~~(f) [(g)]~~ Continuation of Prior Law.

(1) Notwithstanding subsection (b)(2) of this section, a person who began a graduate program before August 31, 2019, leading to a degree in psychology, that otherwise meets the requirements of subsection (a)(1) of this section, shall be considered to have met the requirements of subsection (b)(2) if the individual has completed 42 semester credit hours.

(2) Applicants with degrees consisting of less than 42 semester credit hours may utilize a maximum of 12 semester credit hours from another graduate degree program in psychology to achieve

the total of 42 semester credit hours to meet the requirement of subsection (g)(1) of this section.

~~[(1) Notwithstanding subsection (b)(1)(A) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, shall be considered to have met the requirements of that subsection if the individual's degree is primarily psychological in nature. This subsection expires on August 31, 2021.]~~

~~[(2) Notwithstanding subsection (b)(2) of this section, a person who begins a graduate program leading to a degree required by subsection (a)(1) of this section before August 31, 2019, shall be considered to have met the requirements of that subsection if the individual has completed 42 semester credit hours with at least 27 of those hours in psychology. Applicants with degrees consisting of less than 42 semester credit hours may utilize a maximum of 12 semester credit hours from another graduate degree program in psychology to achieve the total of 42 semester credit hours. This subsection expires on August 31, 2021.]~~

(g) Remedy for Incomplete Licensure Requirements.

(1) An applicant who has completed a graduate degree in psychology, from a regionally accredited institution of higher education, that consists of at least sixty (60) semester credit hours, or meets the requirements of subsection (f) of this section, and who does not meet all of the qualifications for licensure set out in subsection (a)(2) and (4) of this section may petition for permission to remediate an area of deficiency. An applicant may not, petition for the waiver or modification of the requisite degree or passage of the requisite examinations.

(2) The Council may allow an applicant to remediate a deficiency identified in paragraph (1) of this subsection if the applicant can demonstrate:

(A) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(B) the remediation would not adversely affect the public welfare.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychological associate.

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 September 15, 2022.

TRD-202203712

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 305-7706



## 22 TAC §463.9

The Texas Behavioral Health Executive Council proposes amendments to §463.9, relating to Licensed Specialist in School Psychology.

Overview and Explanation of the Proposed Rule. The proposed amendment to subsection (c) makes clear that accredited programs by NASP are considered to meet all training and internship requirements for licensure under this rule, the same as NASP approved programs. Subsection (d) has been amended to allow for those that did not obtain a specialist degree from a school psychology program to apply for licensure if they have obtained a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination

of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.9 *Licensed Specialist in School Psychology.*

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

- (1) hold an appropriate graduate degree;
- (2) provide proof of specific graduate level coursework;
- (3) provide proof of an acceptable internship;
- (4) provide proof of passage of all examinations required by the Council; and
- (5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Appropriate Graduate Degrees.

(1) Applicants who do not hold active NCSP certification, or who did not graduate from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology.

(2) Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement. [ For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology.]

(3) An applicant who holds a graduate degree that does not qualify under subsection (d)(1) but meets the requirements of subsection (d)(2) is considered to have an appropriate graduate degree if the applicant holds a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology.

~~[(d) Applicants who do not hold active NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology.]~~

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

- (1) Psychological Foundations, including:

- (A) biological bases of behavior;
- (B) human learning;
- (C) social bases of behavior;
- (D) multi-cultural bases of behavior;
- (E) child or adolescent development;
- (F) psychopathology or exceptionalities;

- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:

- (A) instructional design;
  - (B) organization and operation of schools;
  - (C) classroom management; or
  - (D) educational administration;
- (4) Assessment, including:
    - (A) psychoeducational assessment;
    - (B) socio-emotional, including behavioral and cultural, assessment;

- (5) Interventions, including:

- (A) counseling;
- (B) behavior management;
- (C) consultation;

- (6) Professional, Legal and Ethical Issues; and
- (7) A Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

(1) At least 600 of the internship hours must have been completed in a public school.

(2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this section.

(3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education; or

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule.

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 September 15, 2022.

TRD-202203713

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 305-7706



## 22 TAC §463.10

The Texas Behavioral Health Executive Council proposes amendments to §463.10, relating to Licensed Psychologists.

Overview and Explanation of the Proposed Rule. The proposed amendment removes the criteria for applicants with a doctoral degree conferred prior to January 1, 1979, from this rule. This same criteria is proposed in new rule §463.15.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or

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

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas

78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

#### §463.10. Licensed Psychologists.

(a) Licensure Requirements. An applicant for licensure as a psychologist must:

- (1) hold a doctoral degree in psychology from a college or university accredited by a regional accrediting organization;
- (2) pass all examinations required by the agency;
- (3) submit documentation of supervised experience from a licensed psychologist which satisfies the requirements of Council §463.11 of this title; and
- (4) meet all other requirements of §501.2525 of the Occupations Code.

(b) Degree Requirements.

(1) For those applicants with a doctoral degree conferred on or after January 1, 1979, the transcript must state that the applicant has a doctoral degree that designates a major in psychology.

(2) For those applicants with a doctoral degree conferred prior to January 1, 1979, the transcript must reflect a doctoral degree that designates a major in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training. A doctoral degree will be considered the substantial equivalent to a doctoral degree in psychology if the training program meets the criteria of Council rule §463.15 of this title. [following criteria:]

[(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.]

[(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.]

[(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.]

[(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the programs cut across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.]

[(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.]

[(F) The program must have an identifiable body of students who matriculated [in the program].

[(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.]

[(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.]

[(I) The following curricular requirements must be met and demonstrated through appropriate course work:]

[(i) Scientific and professional ethics related to the field of psychology.]

[(ii) Research design and methodology, statistics.]

[(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six



graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Council evidence of competency in each of the four core areas.}]

~~[(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.}]~~

~~[(II) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.}]~~

~~[(III) Social basis of behavior: social psychology, group processes, organizational and system theory.}]~~

~~[(IV) Individual differences: personality theory, human development, abnormal psychology.}]~~

~~[(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.}]~~

[(3) Any person intending to apply for licensure under the substantial equivalence clause must file with the Council an affidavit showing:}]

[(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;}]

[(B) Appropriate, published information from the university awarding the degree, demonstrating that the requirements noted in paragraph (2) of this subsection have been met.}]

(c) An applicant who holds an active Certificate of Professional Qualification in Psychology (CPQ) is considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their certification be sent directly to the Council from the Association of State and Provincial Psychology Boards (ASPPB), be submitted to the Council in the sealed envelope in which it was received by the applicant from ASPPB, or be submitted to the Council as directed by agency staff.

(d) An applicant who holds an active specialist certification with the American Board of Professional Psychology (ABPP) is considered to have met all requirements for licensure under this rule except for passage of the EPPP and Jurisprudence Examination. Applicants relying upon this subsection must request that documentation of their specialist certification be sent directly to the Council from ABPP, be submitted to the Council in the sealed envelope in which it was received by the applicant from ABPP, or be submitted to the Council as directed by agency staff.

(e) The requirement for documentation of supervised experience under this rule is waived for an applicant who is actively licensed as a doctoral-level psychologist in good standing and has been practicing psychology in another jurisdiction for at least five years or can affirm that the applicant has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred. Applicants relying upon this subsection must request that verification of their out-of-state licensure be sent directly to the Council from the other jurisdiction, be submitted to the Council in the sealed envelope in which it was

received by the applicant from the other jurisdiction, or be submitted to the Council as directed by agency staff.

(f) Provisional License.

(1) An applicant who has not yet passed the required examinations or is seeking to acquire the supervised experience required under Council §463.11 of this title may practice under the supervision of a licensed psychologist as a provisionally licensed psychologist for not more than two years if the applicant meets all other licensing requirements.

(2) A provisional license will be issued to an applicant upon proof of provisional license eligibility. However, a provisional license will not be issued to an applicant who was issued a provisional license in connection with a prior application.

(3) A provisionally licensed psychologist is subject to all applicable laws governing the practice of psychology.

(4) A provisionally licensed psychologist may be made the subject of an eligibility or disciplinary proceeding. The two-year period for provisional licensure shall not be tolled by any suspension of the provisional license.

(5) A provisional license will expire after two years if the person does not qualify for licensure as a psychologist.

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 September 15, 2022.

TRD-202203714  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Earliest possible date of adoption: October 30, 2022  
For further information, please call: (512) 305-7706



## 22 TAC §463.11

The Texas Behavioral Health Executive Council proposes amendments to §463.11, relating to Supervised Experience Required for Licensure as a Psychologist.

Overview and Explanation of the Proposed Rule. The proposed amendment to subsection (b) adds the Psychological Clinical Science Accreditation System to the list of accredited programs where an applicant can count supervised experience obtained in excess of the 1,750 required as part of the applicant's internship. Subsection (c)(2) is proposed to be deleted, doing away with any time requirements between when a degree is awarded and when the individual applies for licensure. Corresponding amendments have been made in subsection (f) because of the deletion of subsection (c)(2).

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30,

2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§463.11 Supervised Experience Required for Licensure as a Psychologist.*

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological

services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016, may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), Psychological Clinical Science Accreditation System (PCSAS), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations;

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of

the applicant's degree program to an APA, PCSAS, or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

~~[(2) Gaps Related to Supervised Experience:]~~

~~[(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.]~~

~~[(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:]~~

~~[(i) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;]~~

~~[(ii) proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;]~~

~~[(iii) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or]~~

~~[(iv) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.]~~

(2) ~~[(3)]~~ A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(3) ~~[(4)]~~ The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(4) ~~[(5)]~~ All supervised experience must be received from a psychologist licensed at the time supervision is received.

(5) ~~[(6)]~~ The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(6) ~~[(7)]~~ Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(7) ~~[(8)]~~ All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(8) [(9)] Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(9) [(10)] The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (AP-PIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Notwithstanding subsection (d) of this section, if the internship occurs in a rural mental health discipline Health Professional

Shortage Area (HPSA), identified by the U.S. Health Resources & Services Administration (HRSA), then the requirement of two full-time interns and two full-time supervisors does not apply.

(f) [(e)] Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(g) [(f)] Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship; and

~~[(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and]~~

(C) [(D)] upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

~~[(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.]~~

(h) [(g)] Remedy for Incomplete Supervised Experience.

(1) An applicant who has completed at least 1,500 hours of supervised experience in a formal internship, 1,500 hours of supervised experience following conferral of a doctoral degree, and who does not meet all of the supervised experience qualifications for licensure set out in subsections (a), (c), and (d) of this section or §465.2 of this title (relating to Supervision), may petition for permission to remediate an area of deficiency. An applicant may not however, petition for the waiver or modification of the requisite doctoral degree or passage of the requisite examinations.

(2) The Council may allow an applicant to remediate a deficiency identified in paragraph (1) of this subsection if the applicant can demonstrate:

(A) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(B) the remediation would not adversely affect the public welfare.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that

the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist.

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 September 15, 2022.

TRD-202203715

Darrel D. Spinks  
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 305-7706



## 22 TAC §463.12

The Texas Behavioral Health Executive Council proposes amendments to §463.12, relating to Temporary License.

Overview and Explanation of the Proposed Rule. The proposed amendment repeals the requirement that temporary license holders get preapproval 24 hours before one intends to use such a license in this state. Temporary license holders will only be required to report the use of this license after utilizing the full thirty days or the expiration of one year from licensure, whichever occurs first.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local em-

ployment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§463.12. Temporary License.*

(a) A temporary license may be issued to an applicant seeking to practice in this state for a limited time and purpose. To be eligible for temporary licensure, an applicant must:

(1) submit a completed application for temporary licensure, setting forth a brief description of the type of psychological services to be provided;

(2) pay the application fee;

(3) submit proof that the applicant is actively licensed, certified, or registered as a psychologist or psychological associate by another jurisdiction having requirements substantially equal to those prescribed by the Psychologists' Licensing Act;

(4) submit documentation [~~directly from the jurisdiction in which the applicant is licensed~~] indicating that the applicant is in good standing with that jurisdiction;

(5) be supervised (sponsorship) by a psychologist licensed in this state; and

(6) provide documentation that the applicant has passed the Examination for Professional Practice of Psychology at the Texas cut-off for the type of temporary license sought.

(b) Substantial equivalency of another jurisdiction's requirements may be documented by the applicant providing a copy of the other jurisdiction's regulations with the pertinent sections highlighted to indicate training and exam requirements for a particular type of license. The material is then reviewed for substantial equivalency by the Council. An applicant need not demonstrate substantial equivalency if the applicant is licensed in a jurisdiction with which the Council has reciprocity.

(c) Applicants for temporary licensure who hold a current Certificate of Professional Qualification in Psychology, status as a National Health Service Provider, or designation as a specialist from the American Board of Professional Psychology may have documentation from the credentialing entity sent directly to the Council as compliance with and in lieu of subsection (a)(3) and (6) of this section.

(d) For a psychologist practicing under a temporary license issued pursuant to this rule, the supervision required by subsection (a)(5) of this section shall consist of sponsorship by a psychologist licensed in this state. The sponsoring psychologist must be available for consultation with the temporary licensee, but otherwise has no supervisory responsibility for the temporary license holder or the services provided under the temporary license.

(e) Applicants meeting the requirements for temporary licensure shall be granted a temporary license authorizing the delivery of psychological services for no more than thirty days. Upon utilization of the full thirty days, or the expiration of one year from the date of licensure, whichever occurs first, the temporary license shall expire.

(f) Upon utilization of the full thirty days, or the expiration of one year from the date of licensure, whichever occurs first, the [A] temporary licensee must submit written notification to the Council of the dates the licensee delivered psychological services in this state. [intends to deliver psychological services in this state, at least 24 hours prior to the delivery of those services. Psychological services may not be provided in this state under a temporary license on any date not approved by the Council.]

(g) Temporary licensees are subject to all applicable laws governing the practice of psychology in this state, including the Psychologists' Licensing Act and Council rules.

(h) An applicant for permanent licensure in this state is not eligible for temporary licensure. Upon receipt of an application for permanent licensure by a temporary license holder, any temporary license held by an applicant shall expire without further action or notice by the Council.

(i) A temporary license holder may not receive another temporary license until the expiration of one year from the date of issuance of their last temporary license, regardless of whether that license is active or expired.

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 September 15, 2022.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 305-7706



## 22 TAC §463.15

The Texas Behavioral Health Executive Council proposes new §463.15, relating to Criteria for Degrees Conferred Prior to 1979.

Overview and Explanation of the Proposed Rule. This proposed new rule moves the criteria for applicants with a doctoral degree conferred prior to January 1, 1979, from current rule §463.10 to this new rule.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Ex-

ecutive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Be-

havioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.15. Criteria for Degrees Conferred Prior to 1979.

(a) For applicants for licensure as a psychologist with a doctoral degree conferred prior to January 1, 1979, the transcript must reflect a doctoral degree that designates a major in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training. A doctoral degree will be considered the substantial equivalent to a doctoral degree in psychology if the training program meets the following criteria:

(1) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(2) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(3) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(4) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are li-

censed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(5) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(6) The program must have an identifiable body of students who matriculated in the program.

(7) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(8) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(9) The following curricular requirements must be met and demonstrated through appropriate course work:

(A) Scientific and professional ethics related to the field of psychology.

(B) Research design and methodology, statistics.

(C) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Council evidence of competency in each of the four core areas.

(i) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(ii) Cognitive-affective basis of behavior: learning, thinking, motivation, emotion.

(iii) Social basis of behavior: social psychology, group processes, organizational and system theory.

(iv) Individual differences: personality theory, human development, abnormal psychology.

(10) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(b) Any person intending to apply for licensure under the substantial equivalence clause must file with the Council an affidavit showing:



(1) Courses meeting each of the requirements noted in subsection (a) of this rule verified by official transcripts; and

(2) Appropriate, published information from the university awarding the degree, demonstrating that the requirements noted in subsection (a) of this rule have been met.

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

Filed with the Office of the Secretary of State on September 15, 2022.

TRD-202203717

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER B. RULES OF PRACTICE

##### 22 TAC §781.303

The Texas Behavioral Health Executive Council proposes amendments to §781.303, relating to General Standards of Practice.

Overview and Explanation of the Proposed Rule. This amendment is made to better align this rule with the statutory rights and duties listed in Sections 151.001, 153.132, and 153.371 of the Family Code.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§781.303. General Standards of Practice.*

This section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes:

(1) shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider;

(2) shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. If continued professional services are indicated, the licensee shall take reasonable steps to facilitate transferring the client by providing the client with the name and contact information of three sources of service;

(3) shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual;

(4) shall not persistently or flagrantly over treat a client;

(5) shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act;

(6) shall not participate in any way in falsifying licensure applications or any other documents submitted to the Council;

(7) shall ensure that, both before services commence and as services progress, the client knows the licensee's qualifications and any intent to delegate service provision; any restrictions the Council has placed on the licensee's license; the limits on confidentiality and privacy; and applicable fees and payment arrangements;

(8) if the client must barter for services, it is the professional's responsibility to ensure that the client is in no way harmed.

The value of the barter shall be agreed upon in advance and shall not exceed customary charges for the service or goods; and

(9) shall ensure that the client or a legally authorized person representing the client has signed a consent for services[; when appropriate. Prior to commencement of social work services with a minor client who is named in a Suit Affecting Parent Child Relationship (SAPCR), the licensee shall ensure that all legally authorized persons representing the client have signed a consent for services, if applicable.] A licensee shall obtain and keep a copy of the relevant portions of any court order, divorce decree, power of attorney, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward. [maintain these documents in the client's record.]

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 September 15, 2022.

TRD-202203707

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 305-7706



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER C. APPLICATIONS AND LICENSING

##### 22 TAC §801.142

The Texas Behavioral Health Executive Council proposes amended §801.142, relating to Supervised Clinical Experience Requirements and Conditions.

Overview and Explanation of the Proposed Rule. The proposed amendments correct typographical errors.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public

benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, George H. W. Bush State Office Building, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701, or by email to [rules@bhec.texas.gov](mailto:rules@bhec.texas.gov). The deadline for receipt of comments is 5:00 p.m., Central Time, on October 30, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

*§801.142. Supervised Clinical Experience Requirements and Conditions.*

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy, which includes a minimum of 3,000 hours of supervised clinical practice. The required 3,000 must include:

(A) at least 1,500 hours providing direct clinical services, of which:

(i) no more than 500 hours may be provided via technology-assisted services (as approved by the supervisor); and

(ii) at least 500 hours must be providing direct clinical services to couples or families.

(B) of the 200 hours of council-approved supervision, as defined in §801.2 of this title (relating to Definitions), of which:

(i) at least 100 hours must be individual supervision; and

(ii) no more than 50 hours may be provided by telephonic services, but there is no limit for hours by live [lived] video.

(2) The remaining required hours, not covered by subsection (1) above, may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(3) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.

(4) Staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title (relating to Academic Course Content) toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of council-approved supervision.

(5) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(6) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules.

(7) Within 30 days of the initiation of supervision, an LMFT Associate must submit to the council a Supervisory Agreement Form for each council approved supervisor.

(8) An LMFT Associate may have no more than two council-approved supervisors at a time, unless given prior approval by the council or its designee.

(9) Except as specified in paragraph (4) [(2)] of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.

(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the council.

(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the application will be reviewed to determine whether clinical experience requirements have been met in accordance with council rules, 22 Texas Administrative Code, §882.1 (relating to Application Process).

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 September 15, 2022.

TRD-202203709

Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Marriage and Family Therapists  
Earliest possible date of adoption: October 30, 2022  
For further information, please call: (512) 305-7706

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH**

**SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION**

**31 TAC §58.21**

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.

The proposed amendment would prohibit the harvest of oysters in Carlos Bay, Mesquite Bay, and Ayres Bay (hereafter referred to as the Carlos-Mesquite-Ayres complex). The closure to oyster harvest would protect ecologically sensitive and unique oyster habitat from the negative biological impacts of increased harvest pressure. The proposed amendment would also temporarily prohibit the harvest of oysters for two years within the boundary of one restoration area in Approved Area TX-24 in the San Antonio Bay system (Josephine's Reef, 48 acres), and within the boundary of one restoration area in Conditionally Approved Area TX-6 in Galveston Bay (Dollar Reef, 80.2 acres). The proposed amendment would also extend the existing temporary closure for one year at three sites in Conditionally Approved Area TX-4 in upper Galveston Bay (Trinity Sanctuary Reef, Trinity Harvestable Reef 1, and Trinity Harvestable Reef 2; approximately 23.0, 16.9 and 16.9 acres, respectively). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Approved" and "Conditionally Approved" is determined by DSHS.

Oyster reefs in Texas have been impacted by drought, flooding, and hurricanes (e.g. Hurricane Ike, September 2008 and Hurricane Harvey, August 2017; major flooding in the coastal bend during summer/fall 2021) as well as high harvest pressure.

Because dredge harvest activities significantly reduce the vertical relief and structural complexity of oyster reefs (Lenihan and Peterson 1998), dredge-associated habitat degradation can drastically reduce the ecosystem services (the economic value of the conditions and processes through which natural ecosystems, and the species that make them up, sustain and fulfill human life) that are provided by the vertical relief and structure of oyster reefs, such as shoreline protection and habitat provision (Lenihan et al. 2001). While dredging has had limited positive impact on small, privately cultivated oyster reefs where cultch is simultaneously placed (Mercaldo-Allen and Goldberg 2011), extensive dredging on wild (i.e., uncultivated) reefs has often been linked to widescale loss of oyster resources, and associated habitat loss has been linked with declines in biodi-

versity and abundance of coastal faunal communities (Beck et al. 2011). Reduction in vertical relief and structural complexity can lead to increased sedimentation and decreased nutrient availability to resident oysters as well as increased disease prevalence (Colden et al. 2017, Beck et al. 2011), which in turn leads to additional stress resulting in further habitat degradation and loss of resilience. An evaluation of long-term trends in global oyster fisheries shows that oyster fishery decline typically begins with a loss of vertical relief and complexity as a result of dredge related fishing practices (Beck et al. 2011).

The positive effects of protecting oyster habitat from harvest has been well-documented in the scientific literature; larval output and oyster density are significantly higher on restored reefs that are protected from harvest as compared to non-restored or harvestable restored reefs. These non-harvested restoration sites also have greater diversity in the size and age of oysters (Buzan et al. 2015, Peters et al. 2017). The protection from vertical degradation and harvest creates a protected source of broodstock that can enhance oyster populations in surrounding harvested areas (Brietburg et al. 2000). Thus, the increased recruitment and live oyster abundance associated with non-harvested restoration sites is directly linked to sustaining productive fisheries.

In 2017, the department closed six minor bays to oyster harvest (42 TexReg 6018). Those minor bays are unique in that they are relatively shallow systems containing intertidal and shallow-water oyster habitat adjacent to expansive seagrass beds and intertidal vegetation. Historically, oyster resources located in these minor bays and shoreline areas were rarely exploited, as commercial fishing was typically directed towards the more profitable and efficiently harvested reef complexes in larger and deeper waters; thus, the minor bays have functioned as de facto spawning reserves because harvest pressure was minimal and oyster larvae produced from these areas were available to populate oyster habitat on adjacent reefs and bays. However, as oyster resources became depleted on deep-water reefs, commercial harvest effort was redirected to shallow-water reefs. The resultant increase in harvest pressure and the consequent negative impacts to sensitive habitat complexes necessitated regulatory action to prohibit harvest in those systems.

In 2021, the department became aware of increasing harvest efforts for oysters in the Carlos-Mesquite-Ayres complex, which generated concerns with respect to the long-term impacts to habitat within the complex. Shellfish harvest is reported to the department by harvest area rather than bay system or individual reef system, but Mesquite Bay happens to have its own unique harvest area designation (TX-28). The total number of reported commercial vessels reporting harvest from Mesquite Bay during the 2021-2022 commercial oyster season was the highest on record (145 unique vessels compared to an average of 51 unique vessels in license years 2015-2021). Despite relatively early in-season closures for the harvest areas that make up Mesquite (closed December 21st), Carlos (closed January 19th), and Ayres (closed January 14th) bay area complex, the 2021-2022 season accounted for 30.4% of coastwide landings in an area that represents only 2.8% of total oyster habitat. The season is set to open on November 1 and runs until April 30 unless in-season closure thresholds are met and the areas are closed early by the department. The department has determined that in terms of ecological importance and risk of habitat loss, the harvest impacts on the Carlos-Mesquite-Ayres complex are consistent with similar conditions necessitating the closure in 2017 of the six minor bay systems mentioned previously in this preamble.

Closure of the Carlos-Mesquite-Ayres complex will allow these reefs to serve as protected sources of broodstock that support population of adjacent harvest areas to achieve optimum yield on a continuing basis. Providing sustained broodstock sources to re-seed nearby oyster reefs promotes long-term sustainability of the resource and thus long-term viability of the commercial oyster industry. As oyster reefs are both habitat and the source of a harvested product, sustainable reefs are needed to ensure the long-term health of oyster resources and the additional habitat and ecosystem services they provide. The proposed amendment would allow efficient enforcement efforts in the protection of these reefs. Furthermore, the department has determined the amount of commercial harvest experienced in this relatively small area of oyster habitat is not sustainable for the long-term ecosystem health of these reef complexes.

The Carlos-Mesquite-Ayres complex area is characterized by both intertidal and deeper oyster reefs, expansive seagrass beds, and fringing salt marsh habitats. The orientation of the shallow reefs in the system provides protection against erosion of the shoreline and associated wetlands as well as sensitive seagrass habitats. The proximity of shallow water and intertidal oyster habitat to other estuarine habitat types (e.g., seagrasses and marshes) is a major factor affecting macrofauna (invertebrates that live on or in sediment or attached to hard substrates) density and community composition (Grabowski et al. 2005; Gain et al. 2017). Based on a wide-ranging literature review, Grabowski et al (2012) estimated an annual value of ecosystem services provided by oyster reefs in 2011 dollars at a maximum of \$99,421 per hectare (\$40,251 per acre; using a conversion of 2.47 acres per hectare) per year. Based on these values, ecosystem services provided by oyster reefs in the Carlos-Mesquite-Ayres complex are valued at a maximum of \$85,694,379 per year (2,129 acres multiplied by \$40,251 per acre). The minimum value of ecosystem services provided by the aforementioned reefs is calculated at \$4,747,670 (2,129 acres multiplied by \$2,230 per acre; Grabowski et al. 2012) with an average value of \$8,899,220 (2,129 acres multiplied by \$4,180 per acre; Grabowski et al. 2012).

Seagrasses, wetlands, and oyster reefs in this area are near Cedar Bayou and serve as critical nursery habitats for young fish and invertebrates recruiting to the estuary (including both red drum and blue crab) via Cedar Bayou pass (Hall et al. 2016). The protection and continued availability of this habitat may increase the growth, survival, and subsequent recruitment to the fishery for these organisms (Byer et al. 2017; Longmire et al. 2021). This habitat can have a positive economic impact on recreational fisheries (Grabowski et al. 2012). In 2018, the total economic impact of saltwater sportfishing in Texas was \$3.66 billion (Southwick Associates 2020). For Aransas and San Antonio bays alone, the estimated total economic impact of recreational fishing in 2018 was \$270.8 million based on angler effort in those areas. Protection of oyster reefs in those areas contributes to the support of a viable sportfish population and sportfish industry. Studies of recreational fishing opportunities resulting from the Half Moon Reef restoration project in Matagorda Bay indicate that the restored reef adds \$691,000 to Texas' gross domestic product each year and generates an additional \$1.273 million in annual economic activity. The restored reef also created a dozen new jobs related to recreational fishing and \$465,000 in annual labor income (Carlton et al. 2016)

In terms of both the number of commercial oyster boats fishing in this area and oyster landings, the Carlos-Mesquite-Ayres complex experienced similar increased harvest pressure in 2016-

2017 as the six minor bays that were closed to oyster harvest mentioned earlier in this preamble (e.g., 1,227 vessel trips in Mesquite Bay compared to an average of 1,037 vessel trips in Christmas Bay in 2017). While harvest pressure in the Carlos-Mesquite-Ayres complex declined after the record high during the 2016-17 season, it has increased again in recent years. During the 2021-2022 commercial oyster season, the number of reported commercial vessel trips in Mesquite Bay (1,087 vessel trips) and the total commercial harvest (28,667 sacks) are the second highest on record. While landings on many of the reefs in Carlos Bay and Ayres Bay cannot be independently assessed because those data are aggregated into larger harvest areas (in this case, TX- 29 and TX-25, respectively), anecdotal observations reported by the public and department staff indicate increased harvest in these systems. Further, the department has been contacted by members of the public concerned that the structural integrity of the habitat in this complex has been degraded by oyster harvest effort in terms of physical structure and vertical relief. While the department does not have long-term monitoring data on physical habitat structure, live oyster abundance can be used as a proxy for habitat health, as oyster habitats are biogenic (the organisms create the habitat). Several of the reefs within this complex have live oyster abundances that are substantially lower than the average oyster abundance for the entire bay system, indicating that they may have become structurally degraded and thus a priority for protection.

Over the past year, oyster reefs in the Coastal Bend, a geographic area encompassing Corpus Christi Bay northward through Aransas Bay, have been negatively impacted by increased oyster mortality and the resultant impacts of commercial oyster fishing pressure that has been redirected to and concentrated on the remaining viable reef complexes. The preferred salinity range for oysters is 14-30‰ (mille, or tenth of a percent) for adults and 18-23‰ for egg and larval development. Spat (juvenile oysters) settling is optimized at 16-22‰ with diminishing settlement below 16‰ (Pattillo et al., 1997). Additionally, when salinities drop below 10‰ "limited or no recruitment" occurs (La Peyre et al., 2013). While spawning in Texas is likely to occur in every month except July and August, peak spawning events occur from May to early June and again in September and October. During the summer and fall of 2021, many Texas estuaries experienced heavy rainfall and flooding, which brought salinities well below the preferred range for oyster recruitment and survival. Most notably, salinity in nearby Copano Bay dropped below the 10‰ threshold beginning in June 2021, and its monthly average ranged from 2.7‰ to 7.5‰ from June 2021 to December 2021. Sustained low salinity resulted in total oyster mortality over 50% in Copano Bay during fall 2021. Given that Copano Bay typically supported the commercial fishing effort in this area of the coast, much of the commercial fleet redistributed its effort to higher-salinity portions of the bay during the 2021-2022 commercial oyster season---primarily the Carlos-Mesquite-Ayres complex. While observed salinities in this area were not as low as those observed in Copano Bay, they were still sub-optimal during the fall 2021 and winter 2021-2022 timeframe (i.e., <16‰ from July 2021-November 2021), which likely impacted the ability of the complex to recover from the effects of increased harvest pressure. The significant ecological value and sensitivity of the Carlos-Mesquite-Ayres complex, coupled with the increasing harvest pressure, have produced conditions consistent with those that necessitated the closure of the six minor bay systems in 2017.

Therefore, the proposed amendment would prohibit oyster harvest in all waters of Mesquite Bay, Carlos Bay, and Ayres Bay from a line drawn between two points at the southern end of Carlos Bay (28.11450, -96.92570; 28.11061, -96.88817) to a line drawn between two points at the northern end of Ayres Bay (28.21394, -96.81237; 28.18807, -96.79233). The proposed amendment would affect 2,129 acres of oyster habitat (approximately 2.8% of coastwide oyster habitat). The delineation of the closed areas will enhance enforcement efforts in the area.

The proposed temporary restoration closures will allow for the planting of oyster cultch in the restoration areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed. The proposed temporary restoration closure for the reseeded or restoration of oyster areas and allowing the closure for two years ensures that adequate oyster spat can be recruited to the reef and allows enough time so that when the reef is reopened it will provide opportunity to harvest. Closing areas temporarily for reseeded or restoration supports the long-term sustainability of the oyster fishery while achieving optimum yield on a continuing basis. Allowing adequate time to ensure both growth and structure of the reef provides for longer term benefits to the fishery when the reef is reopened for harvest, provides benefits to adjacent reef areas in the terms of broodstock during the temporary protection, and considers the economic costs to ensure that restoration efforts are successful. As oyster reefs serve as both habitat and the source of harvested product, sustainable reefs are needed to ensure the long-term health of oyster resources and the additional habitat and ecosystem services they provide. The department has determined that efficient enforcement of the proposed amendment will be possible.

Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,705 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Funds and materials generated from House Bill 51 are expected to be used to restore at least 24 acres on Josephine's Reef in 2022.

Oyster abundance on this reef has severely declined over time, and average oyster abundance on Josephine's Reef is now substantially lower than other reefs in the San Antonio Bay system based on an assessment of TPWD resource monitoring data. The portion of Josephine's Reef selected for restoration is characterized by degraded substrates. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

Construction of the Houston Ship Channel Expansion Channel Improvement Project (HSC ECIP) will result in unavoidable adverse impacts to oyster reefs. During the Final Integrated Feasibility Report - Environmental Impact Statement for the HSC ECIP, mitigation was proposed in the form of restoring oyster reefs in Galveston Bay to compensate for the loss of habitat from the channel modifications. Two mitigation sites, Dollar Reef and San Leon Reef, were selected in coordination with appropriate resource agencies. Both sites were impacted by Hurricane Ike

and have been the focus of TPWD efforts to restore reef in the bay.

The Dollar Reef Mitigation Site was recently constructed and completed under a contract awarded by the United States Army Corps of Engineers (USACE). The mitigation site consists of three oyster pads consisting of one 13.0-acre oyster pad (Dollar Reef Mitigation Pad A-1), one 17.4-acre oyster pad (Dollar Reef Mitigation Pad A-2), and one 14.2-acre oyster pad (Dollar Reef Mitigation Pad A-3). The pads are spaced approximately 800 feet apart and are oriented in a northeast-to-southwest direction. Portions of the mitigation site are within restricted harvest areas as defined by DSHS Order Number MR-1743, while the remaining area is within a conditionally approved area (TX-6); The restricted harvest areas are not included in the closure request.

The three sites in Galveston Bay TX-6 (Trinity Sanctuary Reef, Trinity Harvestable Reef 1, and Trinity Harvestable Reef 2) were temporarily closed in November 2020 in preparation for restoration, which was completed in January 2021. Abundant rainfall in the late spring and early summer of 2021 caused salinity to be unfavorably low in the area, which negatively impacted oyster recruitment to the restored reefs. No live oysters or spat were collected at any of the three sites during April and July 2021; a few live oysters were observed in November 2021. By January 2022, oysters had begun recruiting to the restoration sites with increased abundance, but these oysters have not yet had a chance to grow to maturity; as of April 2022, 100% of the sampled oysters were below market size. An additional year of closure will allow the oysters that have recruited to the restoration site to grow to maturity.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state; the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens; the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices; the protection of a reef complex to preserve a continuing supply of oyster larvae to colonize oyster habitat and to provide various ecosystem services within the bay system; and to provide, within the precepts of sound biological management, optimum yield to the oystering industry.

The public benefit of protection of the Carlos-Mesquite-Ayres complex area is protection of an area characterized by both intertidal and deeper oyster reefs, expansive seagrass beds, and fringing salt marsh habitats. The orientation of the shallow reefs in the system provides protection against erosion of the shoreline and associated wetlands as well as sensitive seagrass habitats. The ecosystem services provided by oyster reefs in the Carlos-Mesquite-Ayres complex are valued at a maximum of \$85,694,379 per year (2,129 acres multiplied by \$40,251 per acre; Grabowski et al. 2012). The minimum value of ecosystem services provided by the aforementioned reefs is calculated at \$4,747,670 (2,129 acres multiplied by \$2,230 per acre; Grabowski et al. 2012) with an average value of \$8,899,220

(2,129 acres multiplied by \$4,180 per acre; Grabowski et al. 2012).

Healthy oyster reefs provide habitat for sportfish populations that can increase growth and recruitment to these areas, thus creating more opportunities for recreational fishing. While the department is unable to evaluate the exact economic effect that closing the Carlos-Mesquite-Ayres complex to commercial oyster harvest will have on recreational fishing in the area, it is important to note the large impact recreational saltwater fishing has on the state's economy. In 2018, the total economic impact coastwide for saltwater sportfishing was \$3.66 billion, worth \$3.96 billion in 2021 when adjusted for inflation (Southwick Associates 2020). Using angler effort data to assign proportional impacts for San Antonio and Aransas Bays only, Texas anglers spent \$141.6 million in retail sales (\$153.4 million in 2021 dollars), creating \$75.1 million in salaries and wages (\$81.4 million in 2021 dollars). The total economic impact from recreational fishing in San Antonio and Aransas bays in 2018 was estimated to be \$237.7 million (\$257.5 million in 2021 dollars). These impacts are likely underestimates as they only account for anglers that live in Texas and not those who travel from out-of-state to fish Texas bays.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small business or rural economies. Those guidelines, updated in 2017, state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and rural communities to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

To ensure that this analysis captures every small or micro-business affected by the proposed rules, the department assumes that most, if not all persons who hold a commercial oyster license qualify as small or micro-businesses. Department data indicate that there are currently 545 valid commercial oyster licenses in Texas.

Regarding the closure of the Carlos-Mesquite-Ayres complex, the department has determined that there will be adverse economic effects on small businesses, micro-businesses, and persons required to comply. The proposed rule would affect persons licensed by the department to harvest and sell oysters taken from public water. To evaluate the potential reduction in harvest resulting from the proposed closure of the Carlos-Mesquite-Ayres Bay complex, historical trends in commercial oyster harvest, ex-vessel (dockside, or first sale) value of harvest, and number of commercial oyster vessels reporting were examined for each of these areas. While the Mesquite Bay portion of this complex is its own shellfish harvest area (TX-28), the oyster reefs within the Carlos Bay and Ayres Bay portion of this complex make up 54.9% and 41.3% (respectively) of the oyster reefs within the larger shellfish harvest areas in which they are located (TX-29 and TX-25, respectively). The three-year average (license years 2019-2021) of commercial oyster harvest in Mesquite Bay (TX-28) constitutes 1.0% of the coastwide

public season harvest (7,252 sacks). This harvest equates to a three-year average ex-vessel value of \$254,021 (1.0% of coastwide value) for a three-year average of 71 commercial oyster boats reporting landings in Mesquite Bay, which equates to an ex-vessel value loss of approximately \$3,557 per reporting vessel (Mesquite Bay portion only); however, the department notes that production can be highly variable, as shown in data from the 2016-2017 commercial oyster season, in which harvest from Mesquite Bay produced a record 34,588 sacks, which equates to \$1,238,309 ex-vessel value for 113 commercial oyster boats. The 2021-2022 commercial oyster season (License Year (LY) 2022) was also a year of very high landings in Mesquite Bay (second highest s on record) despite a much-shortened season. Landings for LY 2022 were 28,667 sacks, which equates to \$1,256,290 ex-vessel value for 145 commercial oyster boats.

Over the same period (i.e., license years 2019-2021), TX-29 (which contains the Carlos Bay portion of the proposed closure area) experienced a three-year average commercial oyster harvest of 31,758 (4.5% of coastwide landings), which equates to a \$1,200,911 average ex-vessel value (4.5% of coastwide value) for an average of 129 commercial oyster boats. Similar to Mesquite Bay, the 2016-2017 commercial oyster season produced the highest landings on record for TX-29 (82,437 sacks), which equates to a \$2,884,905 ex-vessel value for 179 oyster vessels. The 2021-2022 commercial oyster season (LY 2022) was also a high year for harvest in TX-29 (second-highest on record) with 79,537 sacks landed, which equates to \$3,491,888 ex-vessel value for 260 commercial oyster boats. At the current time harvest data is not reported in a way that would allow for geospatial analysis of harvest or harvest effort on a per-boat basis; therefore, the department for this analysis assumes that landings, ex-vessel value, and number of oyster boat are distributed proportionally to the amount of oyster reef throughout TX-29. Given that 54.9% of the oyster reef in TX-29 is contained in the proposed Carlos Bay closure area, the three-year (license years 2019-2021) average landings, ex-vessel value, and number of oyster boats associated with the Carlos Bay portion of the proposed closure area would be 17,435 sacks (2.5% of coastwide landings) with an ex-vessel value of \$659,300 (2.5% of coastwide ex-vessel value) for 71 vessels.

Lastly, over the same period (i.e., license year 2019-2021), TX-25 (which contains the Ayres Bay portion of the proposed closure area) experienced a three-year average commercial oyster harvest of 111,041 sacks (14.9% of coastwide landings), which equates to a three-year average of \$3,969,931 ex-vessel value (14.7% of coastwide ex-vessel value) for an average of 271 commercial oyster boats. The 2019-2020 commercial oyster season produced a record-high harvest of 139,821 sacks, which equates to \$5,449,091 ex-vessel value for 336 oyster vessels. For this analysis, the department again assumes that landings, ex-vessel value, and number of oyster boats are distributed proportionally to the amount of oyster reef throughout TX-25. Given that 41.3% of the oyster reef in TX-25 is contained in the proposed Ayres Bay closure area, the three-year (license years 2019-2021) average landings, ex-vessel value, and number of oyster boats associated with the Ayres Bay portion of the proposed closure area would be 45,859 sacks (6.1% of coastwide landings) with an ex-vessel value of \$1,639,581 (6.1% of coastwide ex-vessel value) for 112 vessels.

The department estimates (based on the LY 2019-2021 three-year average) that in total the proposed closure of the Carlos-Mesquite-Ayres complex (adjusted proportionally to account for oyster reef) would result in total landings, ex-vessel value, and

oyster boats reporting landings of 70,547 sacks (9.6% of coastwide landings) with an ex-vessel value of \$2,552,903 for 213 vessels. On that basis, the department estimates that the adverse economic impact to small and micro businesses as a result of the rules would be \$11,985 per vessel (\$2,552,903 ex-vessel value / 213 reporting vessels). For contrast and to illustrate the variability of the data, the result in total landings, ex-vessel value, and oyster boats reporting landings for the Carlos-Mesquite-Ayres complex (adjusted proportionally to account for oyster reef) for LY 2022 was 94,608 sacks (30.4% of coastwide landings) with an ex-vessel value of \$4,137,683 for 222 vessels. This represents the highest landings on record for this complex.

The department is required to determine if there are any direct adverse economic impacts to rural communities. The department has determined that there will be no direct impacts because the rule as proposed directly regulates only those persons engaged in harvest activities under a commercial oyster license and does not regulate any community or impose a direct cost, such as a fee, to a local government; however, the department is aware that there may be indirect impacts resulting from diminished commercial harvest. For further information and resources related to indirect economic impacts, visit the TPWD website at [www.tpwd.texas.gov](http://www.tpwd.texas.gov).

The department considered several alternatives to achieve the goals of the proposed rule while reducing adverse economic impacts to small businesses, micro-businesses, and rural communities.

One alternative considered was to maintain the status quo. This alternative was rejected because the department has determined that the current level of harvest in the Carlos-Mesquite-Ayres complex is unsustainable and to allow harvest to continue at the current rate would be to fail to fulfill the department's statutory and regulatory responsibility to protect oyster resources, and by extension, other biologically interconnected systems and fisheries resources in this area. Failure to act would lead to continued oyster reef habitat degradation and reduction of ecosystem services the reef complexes provide to the area.

A second alternative was to prohibit the take of oysters in smaller areas or restrict the prohibition to a single bay system. The department rejected this alternative because the majority of sensitive and at-risk oyster reefs in this area occur where these bays converge; a closure in a smaller area or a single bay would not be sufficient to arrest or reverse the current negative impacts to oyster resources in the reef complex.

Another alternative considered was to calculate a maximum sustainable harvest value for the reef complex and allocate that value to licensees on a per-vessel quota basis. This alternative was rejected because this would not prevent concentration of harvest effort and resultant habitat degradation, would interfere with the optimum yield for the oystering industry by fracturing and fragmenting harvest efforts, would require development of some sort of system for fair allocation of opportunity (which could be problematic), and finally, would be difficult to enforce.

Regarding the temporary closure of sites for oyster restoration, the department has determined that because the areas designated for closure have been degraded to the extent that they no longer support sustainable commercial harvest, the closures affected by the proposed rule will not result in direct adverse economic impacts to any small business, microbusiness, or rural community. The department does note, however, that numerous



areas previously closed temporarily to harvest for restoration activities (South Redfish Reef, Texas City 1, Texas City 2, Hanna's Reef, and Middle Reef), are now home to healthy populations of oysters that have reached legal size and may be harvested by both recreational and commercial users.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not directly or generally impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that the proposed rule is consistent with the applicable provisions of Natural Resources Code, Chapter 33, regarding the Management of Coastal Public Land and 31 TAC §505.11, regarding Actions and Rules Subject to the Coastal Management Program.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; will expand an existing regulation (by creating new area closures); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8575; email: cfish@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters, and §76.115, which authorizes the commission to close an area to the taking of oysters when the commission finds that area is being overworked or damaged or the area is to be re-seeded or restocked.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§58.21. *Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules.*

(a) - (b) (No change.)

(c) Area Closures.

(1) (No change.)

(2) No person may take or attempt to take oysters within an area described in this paragraph. [The provisions of subparagraphs (A)(i)-(v) and (C) of this paragraph cease effect on November 1, 2022.] The provisions of subparagraphs (A)(i)-(vi) [(A)(vi) - (viii) ] and (B) of this paragraph cease effect on November 1, 2023. The provisions of subparagraph (A)(vii) and (C) cease on November 1, 2024.

(A) Galveston Bay.

*(i) Pepper Grove Reef.* The area within the boundaries of a line beginning at 29° 29' 14.7"N, 94° 40' 01.0"W (29.487421°N, -94.666944°W; corner marker buoy A); thence, to 29° 29' 14.8"N, 94° 39' 52.3"W (29.48745°N, -94.664525°W; corner marker buoy B); thence to 29° 29' 08.1"N, 94° 39' 52.2"W (29.485596°N, -94.664497°W; corner marker buoy C); thence to 29° 29' 08.0"N, 94° 40' 00.9"W (29.485567°N, -94.666915°W; corner marker buoy D); and thence back to corner marker buoy A.]

*(ii) Resignation Reef.* The area within the boundaries of a line beginning at 29° 28' 54.3"N, 94° 52' 23.6"W (29.481741°N, -94.873234°W; corner marker buoy A); thence, to 29° 28' 49.3"N, 94° 52' 35.4"W (29.480370°N, -94.876513°W; corner marker buoy B); thence to 29° 28' 39.5"N, 94° 52' 27.5"W (29.477627°N, -94.874316°W; corner marker buoy C); thence to 29° 28' 47.7"N, 94° 52' 18.1"W (29.479921°N, -94.871687°W; corner marker buoy D); and thence back to corner marker buoy A.]

*(i) [(iii)] Trinity Sanctuary Reef.* The area within the boundaries of a line beginning at 29° 38' 26.2"N, 94° 51' 53.1"W (29.640616°N, -94.864753°W; corner marker buoy A); thence, to 29° 38' 22.9"N, 94° 51' 48.7"W (29.639701°N, -94.863539°W; corner marker buoy B); thence to 29° 38' 17.9"N, 94° 51' 49.8"W (29.638304°N, -94.863857°W; corner marker buoy C); thence to 29° 38' 13.2"N, 94° 51' 50.1"W (29.636994°N, -94.863926°W; corner marker buoy D); thence to 29° 38' 10.1"N, 94° 51' 53.2"W (29.636131°N, -94.864777°W; corner marker buoy E); thence to 29° 38' 17.1"N, 94° 52' 01.3"W (29.638092°N, -94.867041°W; corner marker buoy F); and thence back to corner marker buoy A.

*(ii) [(iv)] Trinity Harvestable Reef 1.* The area within the boundaries of a line beginning at 29° 38' 56.2"N, 94° 51' 34.4"W (29.648936°N, -94.859552°W; corner marker buoy A); thence, to 29° 38' 58.8"N, 94° 51' 29.5"W (29.649673°N, -94.858202°W; corner marker buoy B); thence to 29° 38' 55.4"N, 94° 51' 27.1"W (29.648733°N, -94.857531°W; corner marker buoy C); thence to 29° 38' 56.7"N, 94° 51' 24.8"W (29.649075°N, -94.856906°W; corner marker buoy D); thence to 29° 38' 50.5"N, 94° 51' 20.5"W (29.647369°N, -94.855690°W; corner marker buoy E); thence to 29° 38' 46.8"N, 94° 51' 27.7"W (29.646345°N, -94.857704°W; corner marker buoy F); and thence back to corner marker buoy A.

*(iii) [(v)] Trinity Harvestable Reef 2.* The area within the boundaries of a line beginning at 29° 36' 47.0"N, 94° 52' 23.7"W (29.613063°N, -94.873269°W; corner marker buoy A); thence, to 29° 36' 37.2"N, 94° 52' 22.9"W (29.610327°N, -94.873046°W; corner marker buoy B); thence to 29° 36' 36.7"N, 94° 52' 31.1"W (29.610187°N, -94.875306°W; corner marker buoy C); thence to 29° 36' 46.5"N, 94° 52' 31.9"W (29.612924°N, -94.875529°W; corner marker buoy D); and thence back to corner marker buoy A.

*(iv) [(vi)] Dollar Reef.* The area within the boundaries of a line beginning at 29° 27' 30.44" N, 94° 52' 03.23" W (29.458456°N, -94.867565°W, corner marker buoy A); thence, to 29° 27' 32.83" N, 94° 51' 59.91" W (29.459121°N, -94.866643°W, corner marker buoy B); thence, to 29° 27' 29.13" N, 94° 51' 52.67" W (29.458094°N, -94.864632°W, corner marker buoy C); thence, to 29° 27' 15.67" N, 94° 51' 53.44" W (29.454535°N, -94.864846°W, corner marker buoy D); thence, to 29° 27' 04.04" N, 94° 52' 08.47" W (29.451124°N, -94.869021°W, corner marker buoy E); and thence back to corner marker buoy A.

*(v) [(vii)] North Todd's Dump Reef.* The area within the boundaries of a line beginning at 29° 30' 33.76" N, 94° 53' 17.07" W (29.509379°N, -94.888077°W, corner marker buoy A); thence, to 29° 30' 27.89" N, 94° 53' 44.39" W (29.507749°N, -94.895666°W, corner marker buoy B); thence, to 29° 30' 17.10" N, 94° 53' 41.73" W

(29.504752°N, -94.894926°W, corner marker buoy C); thence, to 29° 30' 23.60" N, 94° 53' 12.46" W (29.506556°N, -94.886797°W, corner marker buoy D); and thence back to corner marker buoy A.

(vi) [(viii)] Pepper Grove Reef - Middle Site. The area within the boundaries of a line beginning at 29° 29' 15.83" N, 94° 40' 01.01" W (29.487733° N, -94.666948° W, corner marker buoy A); thence, to 29° 29' 15.93" N, 94° 39' 52.30" W (29.487760° N, -94.66453° W, corner marker buoy B); thence, to 29° 29' 14.81" N, 94° 39' 52.28" W (29.487450° N, -94.664525° W, corner marker buoy C); thence, to 29° 29' 14.71" N, 94° 40' 00.99" W (29.487422° N, -94.666944° W, corner marker buoy D); and thence back to corner marker buoy A.

(vii) Dollar Reef HSE Mitigation Site. The area within the boundaries of a line beginning at 29° 27' 22.92" N, 94° 53' 46.44" W (29.456367° N, -94.896233° W, corner marker buoy A); thence to, 29° 27' 13.62" N, 94° 53' 23.80" W (29.453784° N, -94.889944° W, corner marker buoy B); thence to, 29° 26' 51.77" N, 94° 53' 40.51" W (29.447713° N, -94.894587° W, corner marker buoy C); thence to, 29° 27' 18.96" N, 94° 53' 49.96" W (29.455265° N, -94.897211° W, corner marker buoy D); and thence back to corner marker buoy A.

(B) (No change.)

(C) Espiritu Santo Bay- Josephine's Reef. The area within the boundaries of a line beginning at 28° 18' 42.6"N, 96° 35' 48.9"W (28.311833°N, -96.596916°W; corner marker buoy A); thence, to 28° 18' 34.7"N, 96° 35' 42.0"W (28.309651°N, -96.594988°W; corner marker buoy B); thence to 28° 18' 22.1"N, 96° 36' 00.3"W (28.306142°N, -96.600075°W; corner marker buoy C); thence to 28° 18' 30.0"N, 96° 36' 07.2"W (28.308324°N, -96.602004°W; corner marker buoy D); and thence back to corner marker buoy A.

[(C) Aransas Bay- Grass Island Reef. The area within the boundaries of a line beginning at 28° 06' 17.9"N, 97° 00' 25.6"W (28.104990°N, -97.007128°W; corner marker buoy A); thence, to 28° 06' 06.1"N, 97° 00' 12.7"W (28.101691°N, -97.003527°W; corner marker buoy B); thence to 28° 06' 20.45"N, 96° 59' 55.9"W (28.105682°N, -96.998876°W; corner marker buoy C); thence to 28° 06' 32.3"N, 97° 00' 08.9"W (28.108981°N, -97.002476°W; corner marker buoy D); and thence back to corner marker buoy A.]

(D) - (I) (No change.)

(J) Mesquite Bay, Aransas and Calhoun counties.

(K) Carlos Bay, Aransas County. The area within the boundaries of Carlos Bay from the border of Mesquite Bay to a line beginning at 28°06' 52.19", 96° 55' 32.52" (28.11450° N, -96.92570° W) and ending at 28° 06' 38.19", 96° 53' 17.41" (28.11061° N, -96.88817° W).

(L) Ayres Bay, Calhoun County. The area within the boundaries of Ayres Bay from the border of Mesquite Bay to a line beginning at 28° 12' 50.18", 96° 48' 44.53" (28.21394°N, -96.81237°W) and ending at 28° 11' 17.05", 96° 47' 32.38" (28.18807° N, -96.79233° W).

(M) [(H)] Areas along all shorelines extending 300 feet from the water's edge, including all oysters (whether submerged or not) landward of this 300-foot line.

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 September 19, 2022.

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James Murphy

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 389-4775

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 9. PROPERTY TAX ADMINISTRATION**

**SUBCHAPTER I. VALUATION PROCEDURES**

**34 TAC §9.4009**

The Comptroller of Public Accounts proposes amendments to §9.4009, concerning appraisal of recreational, park, and scenic land. These amendments are to reflect updates and revisions to the guidelines for the appraisal of recreational, park, and scenic land. The proposed updated manual may be viewed at <https://comptroller.texas.gov/taxes/property-tax/rules/index.php>.

The amendments update and revise the April 2016 guidelines for the appraisal of recreational, park, and scenic land. The manual sets forth the methods to apply and the procedures to use in appraising land used for recreational, park, or scenic land under Tax Code, Chapter 23, Subchapter F.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect changes in the rollback period and the elimination of the annual interest rate component from the calculation of the rollback tax in response to House Bill 3833, 87th Legislature, R.S. (2021). In addition, the updated manual adds interest to the rollback tax if it becomes delinquent. The manual is also updated throughout to reflect changes to the application process and added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: 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.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.83 (Appraisal of Restricted Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and promulgate rules specifying the methods to apply and the procedures to use in appraising recreational, park, and scenic land for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapter F.

*§9.4009. Appraisal of Recreational, Park, and Scenic Land.*

Adoption of the "Guidelines for the Appraisal of Recreational, Park, and Scenic Land." These guidelines specify the methods to apply and the procedures to use in appraising land that qualifies for special appraisal as recreational, park, and scenic land. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Appraisal of Recreational, Park, and Scenic Land dated June 2022. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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 September 16, 2022.

TRD-202203720

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 475-2220



**34 TAC §9.4010**

The Comptroller of Public Accounts proposes amendments to §9.4010, concerning appraisal of public access airport property. These amendments are to reflect updates and revisions to the guidelines for the appraisal of public access airport property. The proposed updated manual may be viewed at <https://comptroller.texas.gov/taxes/property-tax/rules/index.php>.

The amendments update and revise the May 2016 guidelines for the appraisal of public access airport property. The manual sets forth the methods to apply and the procedures to use in appraising property that qualifies for special appraisal as public access airport property under Tax Code, Chapter 23, Subchapter G.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated throughout to reflect changes in the rollback period and the elimination of the annual

interest rate component from the calculation of the rollback tax in response to House Bill 3833, 87th Legislature, R.S. (2021). In addition, the updated manual adds interest to the rollback tax if it becomes delinquent. The manual is also updated throughout to reflect changes to the application process and added deadlines to implement Senate Bill 63, 87th Legislature, R.S. (2021).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: 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.

Mr. Reynolds also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

These amendments are proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.93 (Appraisal of Restricted Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and promulgate rules specifying the methods to apply and the procedures to use in appraising public access airport property for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapter G.

*§9.4010. Appraisal of Public Access Airport Property.*

Adoption of the "Guidelines for the Valuation of Public Access Airport Property." These guidelines specify the methods to apply and the procedures to use in appraising property that qualifies for special appraisal as public access airport property. Appraisal districts are required to follow the procedures and methods set out in these guidelines. The Comptroller of Public Accounts adopts by reference the Guidelines for the Valuation of Public Access Airport Property dated June 2022. The guidelines are accessible on our website. Copies of the guidelines can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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 September 16, 2022.

TRD-202203721



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 401, Administrative Practice and Procedure, §§401.3, 401.5, 401.7, 401.11, 401.13, 401.19, 401.21, 401.41, 401.59, 401.61, 401.63, 401.105, 401.119, 401.127 and 401.129, concerning proposed title change from Executive Director to Agency Chief.

##### BACKGROUND AND PURPOSE

The purpose of the proposed title change is to reflect the new title of the head of agency.

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

There is no impact on state and local government.

##### PUBLIC BENEFIT AND COST NOTE

There is no impact on public benefit and cost note.

##### LOCAL ECONOMY IMPACT STATEMENT

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

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

##### GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

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

(8) the rules are not anticipated to have an adverse impact on the state's economy.

##### TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

##### COSTS TO REGULATED PERSONS

There is no impact on costs to regulated persons.

##### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

##### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [amanda.khan@tcfp.texas.gov](mailto:amanda.khan@tcfp.texas.gov).

#### SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

##### 37 TAC §§401.3, 401.5, 401.7, 401.9, 401.11, 401.13

##### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

##### CROSS REFERENCE TO STATUTE

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

##### §401.3. Definitions.

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

(1) **Advisory Committee**--An advisory committee that is required to assist the commission in its rule-making function and whose members are appointed by the commission pursuant to Government Code, §419.008, or other law.

(2) **Agency**--Includes the commission, the Agency Chief [Executive Director], and all divisions, departments, and employees thereof.

(3) **APA**--Government Code, Chapter 2001, The Administrative Procedure Act, as it may be amended from time to time.

(4) Applicant--A person, including the commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(5) Application--A written request seeking a license from the commission, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(6) Authorized Representative--A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate in a commission proceeding.

(7) Chairman--The commissioner who serves as presiding officer of the commission pursuant to Government Code, §419.007.

(8) Commission--The Texas Commission on Fire Protection.

(9) Commissioner--One of the appointed members of the decision-making body defined as the commission.

(10) Complainant--Any person, including the commission's legal staff, who files a signed written complaint intended to initiate a proceeding with the commission regarding any act or omission by a person subject to the commission's jurisdiction.

(11) Contested Case--A proceeding, including but not restricted to, the issuance of certificates, licenses, registrations, permits, etc., in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.

(12) Days--Calendar days, not working days, unless otherwise specified in this chapter or in the commission's substantive rules.

(13) Division--An administrative unit for regulation of specific activities within the commission's jurisdiction.

(14) Agency Chief [~~Executive Director~~] --The Agency Chief [~~Executive Director~~] appointed by the commission pursuant to Government Code, §419.009.

(15) Hearings Officer--An administrative law judge on the staff of the State Office of Administrative Hearings assigned to conduct a hearing and to issue a proposal for decision, including findings of fact and conclusions of law, in a contested case pursuant to Government Code, Chapter 2003.

(16) License--Includes the whole or part of any agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(17) Licensee--A person who holds an agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

(18) Licensing--Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(19) Party--Each person or agency named or admitted as a party in a contested case.

(20) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.

(21) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

(22) Preliminary Staff Conference--A conference with commission staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case.

(23) Presiding Officer--The chairman, the acting chairman, the Agency Chief [~~Executive Director~~], or a duly authorized hearings officer.

(24) Proceeding--Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

(25) Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

(26) SOAH--State Office of Administrative Hearings.

#### §401.5. *Delegation of Authority.*

All decisions to suspend, revoke, or deny an application for any certificate or approval, to reprimand or place on probation the holder of such certificate or approval, or to impose an order for restitution, remedial action, or administrative penalties pursuant to Government Code, Chapter 419, shall be made by the Agency Chief [~~Executive Director~~] or designee.

#### §401.7. *Construction.*

(a) A provision of a rule referring to the commission, the, or a provision Agency Chief [~~Executive Director~~] referring to the presiding officer, is construed to apply to the commission or chairman if the matter is within the jurisdiction of the commission, to the Agency Chief [~~Executive Director~~] if the matter is within the jurisdiction of the Agency Chief [~~Executive Director~~].

(b) Unless otherwise provided by law, any duty imposed on the commission, the chairman, or the Agency Chief [~~Executive Director~~] may be delegated to a duly authorized representative. In such case, the provisions of any rule referring to the commission, the chairman, or the Agency Chief [~~Executive Director~~], shall be construed to also apply to the duly authorized representative of the commission, the chairman, or the Agency Chief [~~Executive Director~~].

#### §401.9. *Records of Official Action.*

All official acts of the commission or the Agency Chief [~~Executive Director~~] shall be evidenced by a recorded or written record. Official action of the commission or the Agency Chief shall not be bound or prejudiced by any informal statement or opinion made by any member of the commission, the Agency Chief [~~Executive Director~~], or the employees of the agency.

#### §401.11. *Conduct of Commission and Advisory Meetings.*

(a) Statements concerning items which are part of the commission's posted agenda. Persons who desire to make presentations to the commission concerning matters on the agenda for a scheduled commission or fire fighter advisory committee meeting shall complete registration cards which shall be made available at the entry to the place where the scheduled meeting is to be held. The registration cards shall include blanks in which all of the following information must be disclosed:

(1) name of the person making a presentation;

(2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;

(3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;

(4) a reference to the agenda item which the person wishes to discuss before the commission;

(5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item; and

(6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(b) Discretion of the presiding officer. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion to employ any generally recognized system of parliamentary procedures, including, but not limited to Robert's Rules of Order for the conduct of commission or committee meetings, to the extent that such parliamentary procedures are consistent with the Texas Open Meetings Act or other applicable law and these rules. The presiding officer shall also have discretion in setting reasonable limits on the time to be allocated for each matter on the agenda of a scheduled commission meeting or advisory committee meeting and for each presentation on a particular agenda item. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.

(c) Requests for issues to be placed on an agenda for discussion. Persons who wish to bring issues before the commission shall first address their request in writing to the Agency Chief [~~Executive Director~~]. Such requests should be submitted at least 15 days in advance of commission or fire fighter advisory committee meetings. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before the fire fighter advisory committee, or with designated staff members, shall be within the discretion of the appropriate presiding officer.

#### §401.13. *Computation of Time.*

(a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified under §401.61 of this title (relating to Record) is deemed to have been notified on the date which notice is sent.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the Agency Chief [~~Executive Director~~] or designee, upon the following conditions:

(1) A written motion must be duly filed with the Agency Chief [~~Executive Director~~] or designee prior to the expiration of the applicable period of time allowed for such filings.

(2) The written motion must show good cause for such extension and that the need is not caused by the neglect, indifference, or lack of diligence on the part of the movant.

(3) A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

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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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812

## SUBCHAPTER B. RULEMAKING PROCEEDINGS

### 37 TAC §401.19

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.19. *Petition for Adoption of Rules.*

(a) Any person may petition the commission requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.

(b) Petitions shall be sent to the Agency Chief [~~Executive Director~~]. Petitions shall be deemed sufficient if they contain:

(1) the name and address of the person or entity on whose behalf the application is filed;

(2) specific reference to the existing rule which is proposed to be changed, amended, or repealed;

(3) the exact wording of the new, changed, or amended proposed rule with new language underlined and deleted language dashed out;

(4) the proposed effective date; and

(5) a justification for the proposed action set out in narrative form with sufficient particularity to inform the commission and any other interested person of the reasons and arguments on which the petitioner is relying.

(c) The Agency Chief [~~Executive Director~~] shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the commission or the fire fighter advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings).

(d) A request for clarification of a rule shall be treated as a petition for a rule change. The commission staff may request submission of additional information from the applicant to comply with the requirements of subsection (b) of this section.

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## SUBCHAPTER C. EXAMINATION APPEALS PROCESS

### 37 TAC §401.21

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.21. Examination Challenge.

(a) An examinee who seeks to challenge the failure of an examination must submit a written request to the Agency Chief [~~Executive Director~~] or his designee to discuss informal disposition of the complaint(s).

(b) An examination may be challenged only on the basis of examination content, failure to comply with commission rules by a certified training facility, or problems in the administration of the examination.

(c) The written request must identify the examinee, the specific examination taken, the date of the examination, and the basis of the appeal.

(d) An examinee who challenges the content of an examination must identify the subject matter of the question(s) challenged and is not entitled to review the examination due to the necessity of preserving test security.

(e) The request must be submitted within 30 days from the date the grade report is posted on the website.

(f) Commission staff shall schedule a preliminary staff conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the commission staff. If the examinee rejects the proposed agreement, the examinee must request in writing a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

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 E. PREHEARING PROCEEDINGS

### 37 TAC §401.41

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.41. Preliminary Staff Conference.

(a) General. After receipt of notice of alleged violations of laws or rules administered or enforced by the commission and its staff, the holder of the certificate, applicant or regulated entity may request a conference with the commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case.

(b) Representation. The certificate holder, applicant or regulated entity may be represented by counsel or by a representative of his or her choice. The commission shall be represented by one or more members of its staff and by commission legal counsel.

(c) Informal Proceedings. The conference shall be informal, and will not follow procedures for contested cases. The commission's representative(s) may prohibit or limit attendance by other persons; may prohibit or limit access to the commission's investigative file by the licensee, the licensee's representative, and the complainant, if present; and may record part or all of the staff conference. At the discretion of the commission's representative(s), the licensee, the licensee's representative, and the commission staff may question witnesses; make relevant statements; and present affidavits, reports, letters, statements of persons not in attendance, and such other evidence as may be appropriate.

(d) Settlement Conference. At the discretion of the commission's representative(s), the preliminary staff conference may be concluded, and a settlement conference initiated to discuss staff recommendations for informal resolution of the issues. Such recommendations may include any disciplinary actions authorized by law, including administrative penalties, restitution, remedial actions, or such reasonable restrictions that may be in the public interest. These recommendations may be modified by the commission's representative(s) based on new information, a change of circumstances, or to expedite resolution in the interest of protecting the public. The commission's representative(s) may also recommend that the investigation be closed or referred for further investigation.

(e) Proposed Consent Order. The licensee may accept or reject the settlement recommendations of the commission staff. If the licensee accepts the recommendations, the licensee shall execute a settlement agreement in the form of a proposed consent order as soon thereafter as practicable. If the licensee rejects the proposed agreement, the matter may be scheduled for a hearing as described in Subchapter F of this chapter.

(f) Approval of Consent Order. Following acceptance and execution of the settlement agreement recommended by staff, said proposed agreement shall be submitted to the Agency Chief [~~Executive Director~~] for approval. If the order is approved, it shall be signed by the Agency Chief [~~Executive Director~~]. If the proposed order is not approved, the licensee shall be so informed and the matter shall be referred to the commission staff for appropriate action to include dismissal, closure, further negotiation, further investigation, or a formal hearing.

(g) Preliminary Notice. A revocation, suspension, annulment, denial, or withdrawal of a certificate or license is not effective unless, before the institution of contested case proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law.

(h) Request for Formal Hearing. Except as otherwise provided by law, if an applicant's original application or request for a certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a formal hearing, and if so requested, the formal hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

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 F. CONTESTED CASES

### 37 TAC §401.59, §401.61

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.59. Orders.

After the time for filing exceptions and replies to exceptions expires, the hearings officer's proposal for decision will be considered by the Agency Chief [~~Executive Director~~] and either adopted or modified and adopted. All final decisions or orders of the commission or the Agency Chief [~~Executive Director~~] shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accomplished by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by certified mail of any decision or order, and a copy of the decision or order shall be delivered or mailed to any party and to his or her authorized representative.

#### §401.61. Record.

(a) The record in a contested case includes the matters listed in the APA, Government Code, §2001.060.

(b) Proceedings, or any part of them, shall be transcribed on written request of any party. The party requesting the proceeding to be transcribed shall make the initial payment for the transcription. Ultimately, however, the commission or Agency Chief [~~Executive Director~~] has the authority to assess, in addition to an administrative penalty, the costs of transcribing the administrative hearing.

(c) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

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 G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

### 37 TAC §401.105

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.105. Administrative Penalties.

(a) Following the hearing the administrative law judge shall issue a proposal for decision containing findings of facts and conclusions of law. While the administrative law judge may recommend a sanction, findings of fact and conclusions of law are inappropriate for sanction recommendations, and sanction recommendations in the form of findings of fact and conclusions of law are an improper application of applicable law and these rules. In all cases, the commission or Agency Chief [~~executive director~~] has the discretion to impose the sanction that best accomplishes the commission's legislatively-assigned enforcement goals. The commission or Agency Chief [~~executive director~~] is the ultimate arbiter of the proper penalty.

(b) The commission, acting through the Agency Chief [~~executive director~~] may, after notice and hearing required by Government Code, Chapter 2001, Administrative Procedure Act, impose an order requiring payment of an administrative penalty or monetary forfeiture in an amount not to exceed \$1,000 for each violation of Government Code, Chapter 419, or rule promulgated there under, as provided by Government Code, §419.906.



(c) In determining the amount of the administrative penalty or monetary forfeiture the commission or the Agency Chief [~~executive director~~] shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited act, and the hazard or potential hazard created to the health and safety of the public;

(2) the economic damage to property or the public's interests or confidences caused by the violation;

(3) the history of previous violations;

(4) any economic benefit gained through the violation;

(5) the amount necessary to deter future violations;

(6) the demonstrated good faith of the person, including efforts taken by the alleged violator to correct the violation;

(7) the economic impact of imposition of the penalty or forfeiture on the person; and

(8) any other matters that justice may require.

(d) The commission or Agency Chief [~~executive director~~] retains the right to increase or decrease the amount of an administrative penalty based on the circumstances in each case. In particular, the commission or Agency Chief [~~executive director~~] may increase the amount of administrative penalties when the respondent has committed multiple violations (e.g. some combination of different violations). Any party aggrieved of a final decision or order of the Agency Chief in a contested case may appeal to the commission after the decision or order complained of is final. An appeal to the commission for review of action of the Agency Chief shall be made within 30 days from the date that the writing evidencing the official action or order complained of is final and appealable, but for good cause shown, the commission may allow an appeal after that date. A motion for rehearing is not a prerequisite for an appeal to the commission.

(e) Oral argument. On the request of any party, the commission may allow oral argument prior to the final determination of an appeal of a decision or order of the Agency Chief.

(f) If the Agency Chief's final decision or order is appealed to the commission, the matter shall be set for the next available commission meeting.

(g) [(e)] Because it is the policy of the commission to pursue expeditious resolution of complaints when appropriate, administrative penalties in uncontested cases may be less than the amounts assessed in contested cases. Among other reasons, this may be because the respondent admits fault, takes steps to rectify matters, timely responds to commission concerns, or identified mitigating circumstances, and because settlements avoid additional administrative costs.

(h) [(f)] The commission or Agency Chief [~~executive director~~] may impose an administrative penalty alone or in addition to other permitted sanctions.

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 H. REINSTATEMENT

### 37 TAC §401.119

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.119. Failure To Appear for Reinstatement.

An applicant for reinstatement of a revoked or suspended license or certificate who makes a commitment to appear before the administrative law judge, and fails to appear at a hearing set with notice by the agency, shall not be authorized to appear before the administrative law judge before the expiration of six months. For good cause shown, the Agency Chief [~~Executive Director~~] may authorize an exception to this rule.

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 I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

### 37 TAC §401.127

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.127. Appeal.

##### (a) Hearing.

(1) Notice. An applicant who does not receive notice as to the complete or deficient status of a certificate application within the period established in this subchapter for such application may petition for a hearing to review the matter.

(2) Processing. An applicant whose permit is not approved or denied within the period established in this subchapter for such certificate may petition for a hearing to review the matter.

(3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).

(b) Petition. A petition filed under this section must be in writing and directed to the Agency Chief [~~Executive Director~~]. The petition shall identify the applicant, indicate the type of certificate sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the Agency Chief [~~Executive Director~~].

(c) Decision. An appeal filed under this section shall be decided in the applicant's favor if the Agency Chief [~~Executive Director~~] finds that:

(1) the agency exceeded an established period under this subchapter; and

(2) the agency failed to establish good cause for exceeding the period.

(d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:

(1) the number of certificates to be processed exceeds by 15% or more the number of certificates processed in the same calendar quarter of the preceding year;

(2) the agency must rely on another public or private entity for all or part of its certificate processing, and the delay is caused by the other entity;

(3) the hearing and decision-making process results in reasonable delay under the circumstances;

(4) the applicant is under administrative review; or

(5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.

(e) Commission review. A permit applicant aggrieved by a final decision or order of the Agency Chief [~~Executive Director~~] concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with §401.63 of this title (relating to Final Decision and Orders).

(f) Relief.

(1) Complete or deficient status. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an application shall be entitled to notice of application status.

(2) Certificate approval or denial. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a certificate shall be entitled to such approval or denial of the certificate and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

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 J. CHARGES FOR PUBLIC RECORDS

### 37 TAC §401.129

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

#### CROSS REFERENCE TO STATUTE

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

#### §401.129. Charges for Public Records.

(a) The commission is subject to Texas Government Code, Chapter 552, Texas Public Information Act. The Act gives the public the right to request access to government information.

(b) The commission adopts by reference Title 1, Part 13, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General.

(c) The Agency Chief [~~executive director~~] may waive or reduce a charge for copies when furnishing the information benefits to the general public.

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 September 19, 2022.

TRD-202203760

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 936-3812



## CHAPTER 435. FIRE FIGHTER SAFETY

### 37 TAC §§435.1, 435.3, 435.5, 435.7, 435.9, 435.11, 435.13, 435.17, 435.19, 435.21, 435.23, 435.25, 435.27, 435.29, 435.31

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 435, Fire Fighter Safety, §§435.1, 435.3, 435.5, 435.7, 435.9, 435.11, 435.13, 435.17, 435.19, 435.21, 435.23, 435.25, 435.27, and 435.29, and new 37 TAC §435.31.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to Chapter 435, Fire Fighter safety, are to ensure the safety of fire fighters.

## FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state government by amending the noted rule sections to enhance firefighter safety.

## PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be safer working conditions for firefighters serving Texas communities.

## LOCAL ECONOMY IMPACT STATEMENT

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

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

## TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

## COSTS TO REGULATED PERSONS

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

## ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

## REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [amanda.khan@tcfp.texas.gov](mailto:amanda.khan@tcfp.texas.gov)

## STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

## CROSS REFERENCE TO STATUTE

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

### §435.1. *Protective Clothing.*

(a) A regulated entity [~~fire department~~] shall:

(1) purchase, rent, lease, provide, and maintain a complete set of protective clothing for each [~~all~~] fire protection person [~~personnel~~] who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of properly fitting protective clothing shall consist of garments including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing [~~which are used by fire protection personnel assigned to fire suppression duties~~] complies [~~complies~~] with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, repaired [~~rebuilt~~], or used protective clothing; and

(3) maintain, provide to the commission upon request, and comply with a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles or its successor.

(b) To ensure that protective clothing for fire protection personnel continues to be suitable for assigned tasks, risk assessments must be conducted in accordance with NFPA 1851 or its successor [~~shall be reviewed and revised as needed, but in any case, not more than five years following the date of the last risk assessment~~].

### §435.3. *Self-Contained Breathing Apparatus.*

The regulated [~~employing~~] entity shall:

(1) [~~purchase,~~] provide, and maintain a complete self-contained breathing apparatus that complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters, or its successor for each on-duty fire protection person [~~personnel~~] who engages [~~engage~~] in operations where IDLH atmospheres may be encountered, where the atmosphere is unknown or would be exposed to hazardous atmospheres from fire or other emergencies or where the potential for such exposure exists;

{(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters;}

(2) [(A)] the National Fire Protection Association standard applicable to a self-contained breathing apparatus is the standard in effect at the time the entity contracts for new, rebuilt, repaired, or used self-contained breathing apparatus;

(3) [(B)] an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(4) [(3)] develop an air quality program that complies with the most recent edition of the NFPA 1989 Standard on Breathing Air Quality for Emergency Services Respiratory Protection or its successor;

(5) [(4)] maintain and supply upon request by the commission, records and reports documenting compliance with commission requirements concerning self-contained breathing apparatus and breathing air. Records of all tests shall be made, and the records shall be retained for a period of no less than three years;

(6) [(5)] maintain and provide upon request by the commission, the [entities] entity's [a departmental] standard operating procedure regarding the use of self-contained breathing apparatus; and

(7) [(6)] maintain and provide upon request by the commission, the [entities] entity's [a department] standard operating procedure regarding the selection, care, and maintenance of self-contained breathing apparatus that complies with the most recent edition of the NFPA 1852 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA) or its successor.

[(8) In any workplace where respiratory protection is necessary to protect the health of the employee or whenever respiratory protection is required by the employer, the employer shall establish and implement a written respiratory program that complies with NFPA 1500, Respiratory Protection Program. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respiratory protection use. Documents related to this rule shall be provided to the Texas Commission on Fire Protection upon request.]

#### §435.5. Commission Recommendations.

The commission recommends that all regulated [employing] entities use as a guide the National Fire Protection Standard 1500 "Fire Department Occupational Safety and Health Program" or its successor. [following publications:]

[(1) NFPA 1403 "Live Fire Training Evolutions";]

[(2) NFPA 1500 "Fire Department Occupational Safety and Health Program;"]

[(3) IAFF/IAFC - "Fire Service Joint Labor Management Wellness-Fitness Initiative."]

#### §435.7. Implementation of Mandatory NFPA Standards [Fire Department Staffing Studies].

[(a)] Allow implementation of TCFP mandated NFPA standards at the Commissioner's discretion up to 365 days from the effective date of the new NFPA standard. [Section 419.022(a)(4) Texas

Government Code provides that the commission may on request, assist in performing staffing studies of fire departments. Staffing studies must take into consideration all the objectives and missions of the fire department. Many staffing studies have been developed that can be used to assist in evaluating the needs of a fire department.]

[(b) A city should ultimately decide on the level of fire protection it is willing to provide to its citizens. The city and fire department should, as a minimum, address the needs of prevention, investigation and suppression as outlined in the appropriate National Fire Protection Association Standards. That decision should be based on facts, the safety of its citizens, and the safety of the fire fighters providing that protection.]

[(c) The commission will assist by maintaining information pertinent to fire department staffing. The information shall be maintained in the Ernest A. Emerson Fire Protection Resource Library at the commission. Copies shall be made available, free of charge, to anyone requesting such information to the extent permitted by copyright laws.]

#### §435.9. Personal Alert Safety System (PASS).

The regulated [employing] entity shall:

(1) [purchase,] provide[,] and maintain a PASS device complying with the minimum standards of the National Fire Protection Association identified in NFPA 1982, Standard on Personal Alert Safety Systems (PASS) for Fire Fighters or its successor for each on duty fire protection person [personnel] who engages [engage] in operations where IDLH atmospheres may be encountered, or where the atmosphere is unknown, or where hazardous conditions from fire or other emergencies exist, or where the potential for such exposure exists;

(2) ensure that all PASS devices used by fire protection personnel comply with the minimum standards of the National Fire Protection Association identified in NFPA 1982, Standard on Personal Alert Safety Systems (PASS) for Fire Fighters.[:] The National Fire Protection Association standard applicable to a PASS device is the standard in effect at the time the entity contracts for new, rebuilt, repaired, or used PASS devices;

[(A) the National Fire Protection Association standard applicable to a PASS device is the standard in effect at the time the entity contracts for new, rebuilt, or used PASS devices;]

[(B) an entity may continue to use a PASS device that meets the requirements of an earlier edition of NFPA 1982, unless the commission determines that the continued use of the PASS device constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard; ]

(3) ensure that the PASS device assigned to an individual user be inspected at the beginning of each duty period and before each use; and [:]

(4) maintain and provide upon request by the commission, the entity's [a departmental] standard operating procedure regarding the proper use, selection, care, and maintenance of PASS devices.

#### §435.11. Incident Management System (IMS).

(a) The regulated entity [fire department] shall develop, maintain, and use an incident management system.

(b) The incident management system shall:

(1) include a written standard operating procedure for the management of emergency incidents;

(2) require that the IMS be used at all emergency incidents;

(3) require operations to be conducted in a manner that recognizes hazards and assists in the prevention of accidents and injuries;

(4) require that all fire protection personnel be trained in the use of the IMS; and

(5) require that the IMS be applied to all drills, exercises and all other situations that involve hazards similar to those encountered at an actual emergency.

(c) The IMS shall meet the requirements of ~~[the applicable sections of the] NFPA 1561, Standard on Emergency Services Incident Management System and Command Safety or its successor [Fire Department Incident Management System].~~

~~[(d) The commission recommends departments follow the National Incident Management System (NIMS) when developing their incident management system.]~~

#### §435.13. Personnel Accountability System.

(a) The regulated entity ~~[fire department]~~ shall develop, maintain, and use a personnel accountability system that provides for a rapid accounting of all personnel at an emergency incident.

(b) The accountability system shall:

(1) require all fire protection personnel be trained in the use of the accountability system;

(2) require that the fire protection personnel accountability system be used at all incidents;

(3) require that all fire protection personnel operating at an emergency incident to actively participate in the personnel accountability system; and

(4) require that the incident commander be responsible for the overall personnel accountability system for the incident.

(c) The fire department shall be responsible for developing the system components required to make the personnel accountability system effective.

(d) The personnel accountability system shall meet the minimum standards required by the National Fire Protection Association 1561, Standard on Emergency Services Incident Management System and Command Safety or its successor ~~[Fire Department Incident Management System. If the standard is revised, the fire department shall have one (1) year from the effective date of the new standard to comply].~~

#### §435.15. Operating At Emergency Incidents.

(a) The regulated entity ~~[fire department]~~ shall develop, maintain, and use a standard operating procedure for fire protection personnel operating at emergency incidents.

(b) The standard operating procedure shall:

(1) specify an adequate number of personnel to safely conduct emergency scene operations;

(2) limit operations to those that can be safely performed by personnel at the scene;

(3) require all personnel to be trained in and use the standard operating procedures; and

(4) comply with §435.17 (Procedures for Interior Structural Fire Fighting (2-In / 2-Out Rule)).

(c) The regulated entity ~~[fire department]~~ may use standards established by the National Fire Protection Association for fire protection personnel operating at an emergency incident.

#### §435.17. Procedures for Interior Structural Fire Fighting (2-In / 2-Out Rule).

(a) ~~The regulated entity shall develop, maintain, and comply with written standard operating procedures that adhere [fire department shall develop written procedures that comply] with the Occupational Safety and Health Administration's Final Rule, 29 CFR Section 1910.134(g)(4) by requiring:~~

(1) a team of at least four fire protection personnel must be assembled before an interior fire attack can be made when the fire has progressed beyond the incipient stage;

(2) at least two fire protection personnel to enter the IDLH atmosphere and remain in visual or voice (not radio) contact with each other;

(A) Visual means that the fire protection personnel must be close enough to see each other.

(B) Voice means that the fire protection personnel of the entry team must be close enough to speak to one another without the use of radios.

(3) at least two fire protection personnel remain located outside the IDLH atmosphere to perform rescue of the fire protection personnel inside the IDLH atmosphere;

(4) all fire protection personnel engaged in interior structural fire fighting use self-contained breathing apparatus and be clothed in a complete set of protective clothing as identified in Chapter 435;

(5) all fire protection personnel located outside the IDLH atmosphere be equipped with appropriate retrieval equipment where retrieval equipment would contribute to the rescue of the fire protection personnel ~~who [that]~~ have entered the IDLH atmosphere;

(6) one of the outside fire protection personnel must actively monitor the status of the inside fire protection personnel and not be assigned other duties. The second outside fire protection personnel may be assigned to an additional role, including, but not limited to, incident commander, safety officer, driver-operator, command technician or aide, or fire fighter/EMS personnel, so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety or health of any fire protection personnel working at the scene;

(7) ~~All fire protection personnel entering an IDLH atmosphere must be equipped with an operable portable radio [the fire protection personnel outside the IDLH atmosphere must remain in communication (including, but not limited to, radio) with the fire protection personnel in the IDLH atmosphere. Use of a signal line (rope) as a communications instrument for interior fire fighting is not permitted by the commission. This does not preclude the use of rescue guide ropes (guideline or lifeline or by what ever name they may be called) used during structural searches]; and~~

(8) each outside fire protection personnel must have a complete set of protective clothing and self-contained breathing apparatus, as identified in Chapter 435, immediately accessible for use if the need for rescue activities inside the IDLH atmosphere is necessary.

(b) The regulated entity ~~[fire department]~~ shall comply with the 2-in/2-out rule as described in this section except in a reasonable belief of an imminent life-threatening situation when immediate action could prevent the loss of life or serious injury before the team of four fire protection personnel are assembled.

(c) Whenever there is a variance to these procedures, a supplemental report must be submitted to the Texas Commission on Fire Protection, documenting the rationale used to deviate from these written procedures.

§435.19. *Enforcement of Commission Rules.*

(a) The commission shall enforce all commission rules at any time, including, but not limited to, commission investigations, fire department inspections, or upon receiving a written complaint from any [an identified] person or entity of an alleged infraction of a commission rule.

(b) The commission shall initiate a biennial inspection with an email notifying the fire department and requesting electronic copies of the Standard Operating Procedures (SOPs), training records, and/or other documentation needed for review, be submitted within 48 business hours of notification. The e-mail will also indicate the date range for an on-site inspection within the upcoming two-week period. Compliance officers may work with the Head of Department to ensure all necessary department representatives will be present at the time of the inspection. Compliance Officers may postpone an inspection for extenuating circumstances with the Compliance Manager's approval.

(c) Upon receipt of a signed complaint alleging a violation of a commission rule, the commission shall have 30 days to initiate an investigation and report back to the complainant its progress.

(d) Upon substantiating the validity of a written complaint, the commission shall follow the procedures outlined in Texas Government Code, Chapter 419, §419.011(b) and (c).

§435.21. *Fire Service Joint Labor Management Wellness-Fitness Initiative.*

(a) A regulated entity [fire department] shall assess the wellness and fitness needs of the personnel in the department. The procedure used to make this assessment shall be written and made available for Commission inspection.

(b) A regulated entity [fire department] shall develop and maintain a standard operating procedure to address those needs.

(c) The approach to the fitness needs of the regulated entity [department] shall be based on the local assessment and local resources.

(d) The standard operating procedure shall be made available to the Commission for inspection.

§435.23. *Fire Protection Personnel [~~Fire Fighter~~] Injuries.*

(a) A regulated entity [fire department] shall report all Texas Workers' Compensation Commission reportable injuries that occur to on-duty regulated fire protection personnel on the Commission form.

(b) Minor injuries are those injuries that do not result in the fire protection personnel [fire fighter] missing more than one duty period or does not involve the failure of personal protective equipment. Minor injuries shall be reported within 30 business days of the injury event.

(c) Major injuries are those that require the fire protection personnel [fire fighter] to miss more than one duty period. Major injuries shall be reported within five business days of the injury event.

(d) Investigatable fire protection personnel injuries are those resulting from the malfunction of personal protective equipment, failure of personal protective equipment to protect the fire protection personnel [fire fighter] from injury, or injuries sustained from failure to comply with any provision of Commission mandated department SOPs. Investigatable injuries shall be reported within five business days of the injury event.

(e) The regulated entity shall secure any personal protective equipment involved in an investigatable fire protection personnel [a fire fighter] injury and shall be made available to the Commission for inspection.

§435.25. *Courage to be Safe So Everyone Goes Home Program.*

~~(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program be completed as part of the continuing education required for certified fire protection personnel. Individuals will be credited with four hours of continuing education credit for completing this program.~~

(a) ~~[(b)]~~ All fire protection personnel will be required to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program training within one year following appointment to a regulated entity [fire department] if the individual has not previously completed the program. Individuals will be credited with four hours of continuing education credit for completing this program.

(b) ~~[(c)]~~ Regulated entities [Departments] will report the completion of training through the commission's web-based [web based] reporting system.

(c) ~~[(d)]~~ Failure to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before the required deadline [deadlines] will be considered a violation of continuing education rules found in Chapter 441 of this title (relating to Continuing Education).

§435.27. *Live Fire Training Structure Evolutions.*

The most current edition of NFPA 1403, Standard on Live Fire Training Evolutions or its successor, shall be used as a guide when developing standard operating procedures for conducting live fire training. The following requirements shall apply for all Live Fire Training Structure Evolutions conducted.

(1) The officer in charge or instructor will ensure that the water supply rate and duration for each individual Live Fire Training Structure Evolution is adequate to control and extinguish the training fire, the supplies necessary for backup lines to protect personnel, and any water needed to protect exposed property.

(2) The instructor-in-charge shall assign the following personnel:

(A) One instructor to each functional crew, which shall not exceed five students.

(B) One instructor to each backup line.

(C) Additional personnel to backup lines to provide mobility.

(D) One additional instructor for each additional functional assignment.

(3) The officer in charge or instructor will ensure that the buildings or props being utilized for live fire training are in a condition that would not pose an undue safety risk.

(4) A safety officer shall be appointed for all Live Fire Training Structure Evolutions. The safety officer shall have the authority, regardless of rank, to alter, suspend or control any aspect of the operations when, in his or her judgment, a potential or actual danger, accident, or unsafe condition exists. The safety officer shall not be assigned other duties that interfere with safety responsibilities.

(5) No person(s) shall play the role of a victim inside the building.

(6) Prior to the ignition of any fire, instructors shall ensure that all personal protective clothing and/or self-contained [self contained] breathing apparatus are NFPA compliant and being worn in the proper manner.

(7) Prior to conducting any live fire training, a pre-burn briefing session shall be conducted. All participants shall be required to conduct a walk-through of the structure in order to have a knowledge of, and familiarity with, the layout of the building and to be able to facilitate any necessary evacuation of the building.

(8) A standard operating procedure shall be developed and utilized for Live Fire Training Structure Evolutions. The standard operating procedure shall include, but not be limited to:

(A) a Personal Alert Safety System (PASS). A PASS device shall be provided for all participating in live fire training and shall meet the requirements in §435.9 of this title (relating to Personal Alert Safety System (PASS));

(B) a Personnel Accountability System that complies with §435.13 of this title (relating to Personnel Accountability System) shall be utilized;

(C) an Incident Management System;

(D) use of personal protective clothing and self-contained breathing apparatus;

(E) an evacuation signal and procedure; and

(F) pre-burn, burn and post-burn procedures.

*§435.29. Federal Highway Administration Traffic Incident Management Program.*

~~[(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the Federal Highway Administration Traffic Incident Management program or an equivalent course that is approved by the commission be completed as part of the continuing education required for certified fire protection personnel by December 1, 2020. Individuals will be credited with four hours of continuing education credit for completing this program.]~~

~~[(b) All regulated fire protection personnel must complete the Federal Highway Administration Traffic Incident Management program or an equivalent course that is approved by the commission prior to December 1, 2020.]~~

~~[(a) [(e)] All fire protection personnel [appointed after December 1, 2020] will be required to complete the Federal Highway Administration Traffic Incident Management program training or an equivalent course that is approved by the commission within one year of appointment to a regulated entity [fire department]. Individuals will be credited with four hours of continuing education credit for completing this program.]~~

~~[(b) [(d)] Departments will report the completion of training through the commission's web-based [web based] reporting system.]~~

~~[(c) [(e)] Failure to complete the Federal Highway Administration Traffic Incident Management program or an equivalent course that is approved by the commission before the required deadline will be considered a violation of continuing education rules found in Chapter 441 of this title (relating to Continuing Education).]~~

*§435.31. Firefighter Cancer Support Network Cancer Awareness Training Program.*

~~[(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the Firefighter Cancer Support Network Cancer Awareness Training program be completed as part of the continuing education required for certified fire protection personnel by December 1, 2024. Individuals will be credited with 2 hours of continuing education credit for completing this program.]~~

(b) All regulated fire protection personnel must complete the Firefighter Cancer Support Network Cancer Awareness Training program prior to December 1, 2024.

(c) All fire protection personnel appointed after December 1, 2024, will be required to complete the Firefighter Cancer Support Network Cancer Awareness Training program training within one year of appointment to a fire department.

(d) Departments will report the completion of training through the commission's web-based reporting system.

(e) Failure to complete the Firefighter Cancer Support Network Cancer Awareness Training program before the required deadline will be considered a violation of continuing education rules found in Chapter 441 of this title (relating to Continuing Education).

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 September 19, 2022.

TRD-202203747

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 936-3812



## CHAPTER 437. FEES

### 37 TAC §437.7, §437.17

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 437, Fees.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to Chapter 437, Fees, proposed amendments to §437.7 updates the web address to obtain a printed copy of the Standards manual for Fire Protection Personnel and Certification Curriculum and updates current name of State Firefighters' and Fire Marshals' Association of Texas.

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

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state government by amending the noted rule sections to enhance firefighter safety.

#### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be safer working conditions for firefighters serving Texas communities.

#### LOCAL ECONOMY IMPACT STATEMENT

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

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

## GOVERNMENT GROWTH IMPACT STATEMENT

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

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

## TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

## COSTS TO REGULATED PERSONS

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

## ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

## REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [amanda.khan@tcfp.texas.gov](mailto:amanda.khan@tcfp.texas.gov).

## STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

## CROSS REFERENCE TO STATUTE

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

§437.7. *Standards Manual and Certification Curriculum Manual Fees.*

(a) Current versions of the Standards Manual for Fire Protection Personnel and Certification Curriculum Manual are available on the commission's website.

(b) The commission does not provide printed copies of the manuals. A printed copy of the commission's standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is [www.thomsonreuters.com](http://www.thomsonreuters.com) [ [www.west.thomson.com](http://www.west.thomson.com)].

§437.17. *Records Review Fees.*

(a) A non-refundable fee of \$75 shall be charged for each training records review conducted by the commission for the purpose of determining equivalency to the appropriate commission training program or to establish eligibility to test. Applicants submitting training records for review shall receive a written analysis from the commission.

(b) The fee provided for in this section shall not apply to an individual who holds an advanced or Fire Fighter II certificate from the State Firefighters' [Firemen's] and Fire Marshals' Association of Texas.

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 September 19, 2022.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 936-3812



## CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

### SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

#### 37 TAC §439.19

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 439, Examinations for Certification.

#### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §439.19 amends the testing requirements

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



There is no impact on state and local government.

#### PUBLIC BENEFIT AND COST NOTE

There is no cost note with proposed amendments.

#### LOCAL ECONOMY IMPACT STATEMENT

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

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

#### TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

There is no impact on costs to regulated persons.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [amanda.khan@tcfp.texas.gov](mailto:amanda.khan@tcfp.texas.gov).

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

#### CROSS REFERENCE TO STATUTE

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

#### §439.19. *Number of Test Questions.*

(a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly. The maximum possible number of pilot questions will be 10% of the number of exam questions, rounded up.

(b) The number of questions on an examination, sectional examination, or retest will be based upon the specific examination, or number of recommended hours for a particular curriculum or section as shown in the table below. Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.

Figure: 37 TAC §439.19(b)

[Figure: 37 TAC §439.19(b)]

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 September 19, 2022.

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Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: October 30, 2022

For further information, please call: (512) 936-3812

