

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601 - 55.605

The Office of the Attorney General (OAG) adopts amendments to 1 Texas Administrative Code (TAC), Part 3, Chapter 55, Subchapter M, §§55.601 - 55.605. The rules address insurance reporting and intercept of certain insurance settlements and awards for child support purposes pursuant to Texas Family Code §§231.003 and 231.015. These rules are adopted with minor non-substantive edits to the proposed text as published in the December 17, 2021, issue of the *Texas Register* (46 TexReg 8409) and will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

These amendments implement changes made to Texas Family Code §231.015 by Senate Bill 1174, 84th Legislature, Regular Session (2015) and House Bill 3845, 85th Legislature, Regular Session (2017). Insurance industry stakeholders provided input on those changes. In addition, the Texas Department of Insurance provided feedback on the adopted rules.

The adopted rules prescribe how the OAG, a Title IV-D agency (Texas Family Code §231.001), will operate a program under which insurers cooperate with the OAG in (1) identifying obligors who owe child support arrearages and are subject to liens for child support arrearages, and (2) intercepting certain insurance settlements or awards for claims in satisfaction of the arrearage amounts ("insurance intercept program").

SECTION-BY-SECTION SUMMARY

The following paragraphs explain how the amendments are implemented.

Section 55.601. The adopted amendments to 1 TAC §55.601 reflect the changes made to Texas Family Code §231.015 during the 84th and 85th Legislative Sessions. The amendments address concerns submitted by insurance industry stakeholders and clarify the economic benefits that do not need to be reported by insurers.

The adopted amendments to 1 TAC §55.601(c)(1) reflect the language in Texas Family Code §231.015(c)(1) and pertain to certain first-party actual property damage claims. These claims consist of insurance policy benefits that arise out of covered

damage for actual repair, replacement, or loss of use of insured property (i.e., roof damage).

The adopted amendments to 1 TAC §55.601(c)(8) reflect the language of Texas Family Code §231.015(c)(4) and (c)(5) and address concerns from insurance industry stakeholders that these claims should be excluded from the reporting requirement regardless of the claim amount or period of days covered by the claim. The amendment deletes the language, "that do not exceed \$1,000 per person over a 30-day period," which triggered reporting of these claims.

New 1 TAC §55.601(c)(11) reflects the language in Texas Family Code §231.015(c)(2), removing the requirement to report certain third-party property damage claims. These claims consist of insurance policy benefits payable to a vendor, repair facility, or a claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement, or loss of use of dwellings, vehicles, or other tangible property. Typically, these claims are not sought by the Child Support Division to pay child support arrears.

New 1 TAC §55.601(c)(12) removes the requirement to report the payment of funds when benefits are paid or payable to a claimant under workers' compensation coverage where the claimant has paid a healthcare provider's bill, and the payment is less than the amount owed. These types of funds are not typically sought by the Child Support Division to pay child support arrears.

New 1 TAC §55.601(c)(13) reflects the language in Texas Family Code §231.015(c)(3). This new subsection also incorporates input from insurance industry stakeholders who requested a specific reporting exemption for small face-value insurance policies (also known as pre-need policies) designed to provide benefits payable to a funeral or burial provider for funeral or burial expenses. These types of funds are not typically sought by the Child Support Division to pay child support arrears.

The adopted amendments to 1 TAC §55.601(d) clarify insurers' matching and reporting requirements for life insurance policies and annuities issued to individuals who reside in Texas as well as for coverage to an insured party on a third-party claim that occurs in Texas. The amendments require that insurers must match and report when a life insurance policy or an annuity was issued to an individual who resides in Texas. This removes the "is located" provision because insurers do not have stored information on where an individual may be located other than his or her place of residence.

The amendments also clarify that liability insurers or eligible surplus lines insurers must match and report when they provide coverage to an insured for a third-party claim if the claim occurs in Texas. In addition, the amendments remove provisions that would require the insurer to match and report when the insurer

is authorized to provide liability insurance in Texas, but there is no known connection or link between the particular policy and Texas.

The adopted amendments to 1 TAC §55.601(i) provide current Child Support Division contact information to insurers who seek compliance exemption requests.

Overall, the Child Support Division anticipates that these amendments will result in fewer requests for specific exceptions under 1 TAC §55.601(i) and fewer reports of economic benefits already intended to be exceptions to the reporting requirements. However, the proposed amendments only pertain to reporting requirements and do not negate the Child Support Division's ability or statutory authority to file a lien against these types of economic benefits.

Section 55.602. The adopted amendments to 1 TAC §55.602 reflect that insurers have multiple data matching options to match claims. As insurers have data matching options through the Child Support Lien Network (CSLN) or the federal Office of Child Support Enforcement (OCSE), the title has been revised from "Child Support Lien Network" to "Data Matching Options."

The adopted amendment to 1 TAC §55.602(b) revises the phrase, "Other Partners" to "Partners" to track the current section title on the OCSE website.

New 1 TAC §55.602(c) paraphrases requirements previously included in 1 TAC §55.602(b) and addresses the request of some insurers to permit "bulk" data matching. If an insurer performs "bulk" data matching, a claim cannot be paid without the insurer first confirming with the Child Support Division that the match is still valid. In addition, an insurer must receive and process a notice of child support lien or an income withholding order to secure the payment of the past-due support amount or a release.

Section 55.603. The adopted amendments to 1 TAC §55.603, "Insurance Services Office Data Match," clarify that an insurer can conduct a data match of its pending claims against a list of delinquent child support obligors maintained by the Insurance Services Office (ISO). The ISO matches and claim reports may be performed manually or an automatic data match. As such, the title has been revised from "Automated Data Match" to "Insurance Services Office Data Match."

Section 55.604. The adopted amendments to 1 TAC §55.604(g) clarify that a life insurer that uses the OCSE's website for claim matching and reporting must await a response from the Child Support Division before it issues a payment. CSLN provides a real time response; the OCSE's process does not. This clarification is necessary as insurers can utilize either the CSLN interactive option or the OCSE's option for matching and reporting.

Section 55.605. The adopted amendments to 1 TAC §55.605(b)(3) reflect the requests of the OAG and insurance industry stakeholders to simplify the payment process for insurers such that if a claimant has no attorney, and the insurer has not received a copy of any signed agreement between the claimant and the Child Support Division, the insurer is required to remit the child support insurance lien payment to the OAG with the funds made payable to the OAG.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support (IV-D Director), has determined that for the first five-year period the adopted 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.

PUBLIC BENEFIT AND COST

Ms. Thornton has also determined that for each year of the first five years the adopted rules are in effect the public will benefit from clarification of the process for intercept of insurance claims under Texas Family Code §231.015. In addition, for each year of the first five-year period the adopted rules are in effect, there are no anticipated economic costs to persons who are required to comply with the adopted rules.

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

Ms. Thornton has determined that there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities. Since the adopted 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, is not required.

LOCAL EMPLOYMENT OR ECONOMY IMPACT

Ms. Thornton has determined that the adopted rules do not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the adopted rules will be in effect, the adopted rules:

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

TAKINGS IMPACT ASSESSMENT

Ms. Thornton has determined that no private real property interests are affected by the adopted rules and the adopted 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 adopted rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENT

The adopted rules were published in the December 17, 2021 issue of the *Texas Register* (46 TexReg 8409). The deadline for public comment was January 16, 2022. The OAG did not

receive any comments from interested parties on the adopted rules during the 30-day public comment period.

STATUTORY AUTHORITY. OAG adopts amendments to 1 TAC §§55.601 - §55.605 pursuant to Texas Family Code §§231.001, 231.003, and 231.015. Section 231.001 designates the OAG as Texas's Title IV-D agency. Section 231.003 authorizes the OAG to promulgate procedures for the implementation of Chapter 231 by rule. Section 231.015 provides that the OAG will operate an insurance intercept program by rule through which insurers will cooperate with the OAG in (1) identifying obligors who owe child support arrearages and are subject to liens for child support arrearages, and (2) intercepting certain insurance settlements or awards for claims in satisfaction of the arrearage amounts.

CROSS-REFERENCE TO STATUTE. No other rules, codes, or statutes are affected by this change.

§55.601. *Scope.*

(a) Under Texas Family Code §231.015, the Child Support Division (CSD) of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, is required to operate by rule an insurance intercept program under which insurers must cooperate with the CSD in matching the names of claimants with the names of child support obligors who owe past-due child support. When such an individual is identified, the insurer will receive either a notice of child support lien or an income withholding order to secure the payment of the amount of past-due support. This subchapter explains how the matching process and the reporting process work.

(b) Except as provided by subsection (c) of this section, as used in this subchapter, a "claim" that must be matched and must be reported is any which seeks an economic benefit for the claimant.

(1) An "economic benefit" under a life, accident, health policy or annuity is defined as a payment in which an individual is paid as the payee or co-payee:

(A) for a claim by a beneficiary under a life insurance policy;

(B) for the cash surrender value by an owner of a life insurance policy or annuity;

(C) for payments to an annuitant; or

(D) a payment to an individual as the payee or co-payee on a first-party claim as defined herein, unless excluded under subsection (c)(2) of this section.

(2) An "economic benefit" under a property and casualty insurance policy is defined as a payment involving:

(A) a payment to an individual as the payee or co-payee on a first-party claim as defined herein, unless excluded under subsection (c)(1) of this section; payments involving third-party claims, as defined herein, where the individual would be entitled to compensations from an insured covered by a liability insurance policy or self-insurer including claims covering personal or bodily injury, lost wages, property damage, non-economic tort damages, wrongful death damages, or accidental death damages; or

(B) payments to individuals for employment or workers' compensation benefits covered by an insurance policy or certified self-insurer.

(3) The term "first-party claim" means:

(A) a claim that is made by the insured or policyholder under an insurance policy or contract or by a beneficiary named in a life insurance policy or annuity; and

(B) the proceeds must be paid by the insurer directly to the insured or beneficiary.

(4) The term "third-party claim" means a claim for bodily injury, property damage or other damages that is brought by a third-party against an insured that is covered by a liability insurance policy or contract or by a self-insured.

(c) The following economic benefits are not considered economic benefits that require reporting:

(1) "first-party actual property damage claims" defined as benefits payable under an insurance policy arising out of covered damage for actual repair, replacement, or loss of use of insured property. Examples include:

(A) physical damage coverage under a personal automobile policy for actual repair, replacement, loss of use, or other associated costs including, but not limited to towing, storage, vehicle rentals, or costs to an insured vehicle;

(B) coverage for loss of damage to an insured dwelling and contents under a residential, homeowners, farm and ranch owners, condominium owners, tenant property insurance policy, or other similar policies including additional living expenses payable under such a policy;

(C) benefits paid to the mortgagee or lienholder of the property including payments issued jointly to the insured and mortgagee; and

(D) coverage for physical loss or damage to commercial property or business personal property insured under a commercial property, farm, inland marine, builder's risk, or other similar policies.

(2) "actual medical expenses" defined as a payment

(A) issued and sent directly to a healthcare provider; or

(B) issued and sent directly to the claimant after the claimant provides proof of the amount actually paid by the claimant to the healthcare provider or providers, the amount is at least as much as the insurance payment and, the amount does not include any amounts billed but not paid.

(3) A co-payable insurance payment mailed directly to a vendor, repair facility, or healthcare provider that includes the claimant as a co-payee under subsection (1) or (2) of this section.

(4) A loan against the cash value or surrender value of an insurance policy or annuity, including loans for premium payments.

(5) Dividends or other payments made under an insurance policy or annuity that are credited or retained by the insurer or that will not exceed \$1,200 over a 12-month period.

(6) Benefits payable directly to a creditor of a claimant under the terms of the policy.

(7) Benefits assigned to be paid to a healthcare provider or facility for "actual expenses" defined as the amount actually owed by the insured not otherwise paid or reimbursed.

(8) Limited benefits that include coverage for one or more specified diseases or illnesses; dental or vision benefits; hospital indemnity or other fixed indemnity insurance coverage; and, short-term major medical contracts, including any benefits to be paid under a plan or rider of accident insurance, accidental death, or loss of limb coverage.

(9) Benefits paid in accordance with a "long term care benefit plan" as defined in §1651.003 of the Insurance Code.

(10) Benefits paid on behalf of an individual directly to a retirement plan or an accelerated death benefit as defined in Chapter 1111 of the Insurance Code.

(11) "third-party property damage claims" defined as benefits paid or payable to:

(A) a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible property that has sustained actual damage or loss; or

(B) a claimant for reimbursement of the claimant for payments made by the claimant to a vendor or repair facility for the actual repair, replacement, or loss of use of:

(i) a dwelling, condominium, or other improvements on real property;

(ii) a vehicle, including a motor vehicle, motorcycle, or recreational vehicle; or

(iii) other tangible property that has sustained actual damage or loss.

(12) Benefits paid or payable to a claimant under workers' compensation coverage where the claimant has paid a healthcare provider's bill and payment is no greater than the amount owed for the treatment rendered.

(13) A claim for benefits, or a portion of a claim for benefits, assigned to be paid to a funeral service provider or facility for actual funeral expenses owed by the insured that are not otherwise paid or reimbursed.

(d) All insurers are subject to the matching and reporting requirements under this subchapter and must match and report any claim seeking an economic benefit in which:

(1) the owner of a life policy or annuity that was issued to an individual resides in Texas;

(2) the beneficiary making a claim on a life policy or annuity resides in Texas;

(3) a first-party claimant making a claim resides in Texas;

(4) a third-party claimant making a third-party claim, as defined in subsection (b)(4) of this section, resides in Texas; or

(5) a liability insurer or an eligible surplus lines insurer is providing coverage to an insured on a third-party claim and the claim occurs in Texas.

(e) For a claim under subsection (d)(4) or (d)(5) of this section, the liability insurer must comply with the match and reporting requirements if coverage to an insured would result in payments to the third-party claimant as a child support obligor based on the liability of the insured to the third-party claimant.

(f) To determine whether a recipient of funds paid under a claim owes child support arrearages or is subject to a lien for child support arrearages, insurers are encouraged to report all claims.

(g) As used in this subchapter, "insurer" means:

(1) a domestic, foreign, or alien company which provides insurance coverage of any kind, including:

(A) life insurance;

(B) health insurance;

(C) liability insurance for an occurrence;

(D) an annuity; or

(E) any combination of subparagraphs (A) - (D) of this paragraph;

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange;

(4) a fraternal benefit society;

(5) a mutual aid association, including a mutual insurance company;

(6) a surplus lines insurer;

(7) a certified self-insurer granted a certificate of authority as authorized by Labor Code Chapter 407;

(8) a certified self-insurer group granted a certificate of approval as authorized by Labor Code Chapter 407A; or

(9) a governmental entity that self-insures, either individually or collectively under an interlocal cooperation contract as authorized by Government Code Chapter 791.

(h) To assure the flexibility to accommodate the various types of operations of the entities subject to the rules, these rules will be liberally construed.

(i) If compliance with these rules may result in an operational hardship or an injustice to any party, the rules may be suspended at the discretion of the Title IV-D Director. An exemption request under this provision must be sent to the Office of the Attorney General of Texas, Special Collections Unit, by mail: P.O. Box 12027, Austin, Texas 78711-2027, by FAX: (512) 433-4691, or by e-mail: tx-insscu@oag.texas.gov, providing the basis or the hardship or injustice and the length of time needed to comply.

(j) The Title IV-D Director may delegate a power, duty, or responsibility under these rules to one or more persons in the Child Support Division.

§55.602. *Data Matching Options.*

(a) The Child Support Division (CSD) has contracted with the State of Rhode Island and Providence Plantations to participate in the Child Support Lien Network (CSLN). CSLN provides an insurer with two methods of matching: an Automated Data Match and an Interactive Lookup. An insurer subject to the requirements of this subchapter may choose to provide or obtain matching information using either or both the CSLN Automated Data Match process and the CSLN Interactive Lookup.

(b) As an alternative to an automated data match with CSLN, an insurer may participate in a similar automated data match with the federal Office of Child Support Enforcement (OCSE). An insurer may obtain information about the OCSE match program, including enrollment options, through the OCSE website (<http://www.acf.hhs.gov/css>). An insurer or agent of an insurer participating in OCSE's automated, data match process may either submit information on claims to OCSE or receive a file from OCSE containing information about individuals who owe past-due support (delinquent obligor information) and generate a match file to OCSE.

(c) A data match must occur before any claim is paid. The data match must be made at the time or after a claim is filed but before the claim has been paid. In addition to this match, an insurer can perform periodic data matching in advance of such claims. In the event of a match prior to a claim, the insurer will not pay the claim without first confirming with CSD that the match is still valid, and without first receiving and processing either a notice of child support lien or an income withholding order to secure payment of the amount of past-due support or a release.

§55.603. Insurance Services Office Data Match.

(a) An insurer can conduct an automatic data match of its pending claims against a list of delinquent child support obligors maintained by the Insurance Services Office (ISO). ISO is an industry service provider, located in New Jersey, which provides a claim search service to assist subscribing insurers in fraud detection.

(b) An insurer participating in the automated data matching process must give ISO permission to match the insurer's claim data with Child Support Lien Network (CSLN) or the federal Office of Child Support Enforcement (OCSE).

(c) CSLN matches its list of child support obligors daily against the ISO claim data. ISO returns matches to OCSE to distribute to the State child support agency(ies) responsible for collecting past-due support.

(d) A participating insurer will receive a notice of child support lien (or withholding instrument for a workers' compensation claim) only on those claims that the insurer has registered with ISO and that match the name of an obligor who owes past-due child support. Claims information that does not match individuals who owe past-due support is discarded.

§55.604. Interactive Lookup.

(a) By accessing the Child Support Lien Network (CSLN) database (<http://www.childsupportliens.com>), an insurer may determine whether a claimant owes past-due child support.

(b) Secure access to the CSLN database will be approved once the registration information and confidentiality statement have been received and reviewed.

(c) Unless the insurer is participating in the CSLN or the federal Office of the Child Support Enforcement (OCSE) Automated Data Match, the insurer must query the database prior to the payment of the claim.

(1) For claims involving periodic payments after the insurer has determined that benefits will be payable, the query must be made only prior to the initial payment after the insurer has determined that benefits are payable. No inquiry is required for each periodic payment for 12 months thereafter. Examples of these types of claims would include:

- (A) periodic payments under a disability policy;
- (B) workers' compensation policy;
- (C) accident or health insurance policy involving periodic payments; or
- (D) payments to an annuitant for an annuitization including systematic withdrawal.

(2) If additional information is required to be submitted to continue periodic payments, this will not be considered a new claim if the information is provided within 12 months of the initial determination.

(3) A claim involving different benefits or coverages will be considered a new claim and the data base must be queried.

(d) Insurers are notified when a query of the database results in:

- (1) no match.
- (2) a positive match, in which basic match data is provided.
- (3) multiple positive matches within one state, in which the insurer is prompted to contact CSLN to identify the correct obligor.

(4) multiple possible matches within more than one state, in which the insurer is notified that CSLN will work with the insurer and the affected states to determine the appropriate course of action.

(e) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. CSLN or the State child support agency will send a notice of child support lien (or, in the case of workers' compensation claim, a withholding instrument) to the insurer.

(f) As an alternative to CSLN, a life insurance company can use OCSE's web-based application, the Debt Inquiry Service, to submit information about life insurance beneficiaries who have filed a claim prior to making a payout to determine if a beneficiary owes past-due support. The information may be provided through individual look-ups or by uploading a single file containing information about multiple individuals. The information provided by the life insurance companies is compared with individuals who owe past-due child support. If there is a match, the life insurance company receives the name of the State(s) where the individual owes past-due support and contact information for that State. If the match identifies an individual subject to a child support order being enforced by the Child Support Division (CSD), the life insurance company may either contact the CSD or await notice from the CSD concerning the match; however, no payout will be made to the claimant unless authorized by the CSD.

(g) Apart from life insurance claims, the OCSE Debt Inquiry Services portal does not provide enough information to satisfy the insurance data match requirements under this subchapter.

§55.605. Protection from Liability; Remittance of Funds.

(a) An insurer that provides information required by this subchapter or acts in good faith to comply with procedures established by the Child Support Division (CSD) for the operation of the insurance intercept program under this subchapter, including the remittance of funds as specified under this rule, or responds to a notice of child support lien or levy under Texas Family Code Chapter 157, Subchapter G, is not liable for those acts under any law to any person. This includes but is not limited to any claims asserted under Chapter 541, Chapter 542, Chapter 601, or Chapter 602 of the Insurance Code; Chapter 17 of the Business and Commerce Code; Chapter 181 of the Health and Safety Code; or an action for common law bad faith. However, an insurer who fails to comply with a child support lien, including the remittance of funds as specified under this rule, may be liable to the CSD as the child support lien claimant in an amount equal to the amount of funds payable under an insurance claim, not to exceed the amount of the child support arrearages for which the lien was issued. *See* Texas Family Code §157.324. An insurer who has questions or concerns about a child support lien, including the appropriate remittance of funds under a policy to which the lien attaches, must contact the Texas Special Collections Unit, P.O. Box 12027, Austin, Texas 78711-2027, before paying out any funds under the policy.

(b) An insurer should remit funds in satisfaction of a child support lien in one of the following ways:

- (1) On receipt of a signed agreement between the CSD and a claimant and/or claimant's attorney, the insurer should remit the funds

agreed to be paid to satisfy the child support lien to: Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996. The funds should be made payable to the Office of the Attorney General, and the remittance should identify the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

(2) If the claimant is represented by an attorney but the insurer has not received a copy of any signed agreement between the attorney and the CSD, the insurer should remit all the funds directly to the claimant's attorney and must include the Office of the Attorney General as a co-payee and provide the Office of the Attorney General with written notice of the data and amount of the payment sent to the attorney.

(3) If the claimant has no attorney, and the insurer has not received a copy of any signed agreement between the claimant and the CSD, the insurer must remit all the funds to the Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996 with the funds being made payable to the Office of the Attorney General and the remittance should identify the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201588

Austin Kinghorn

General Counsel

Office of the Attorney General

Effective date: May 12, 2022

Proposal publication date: December 17, 2021

For further information, please call: (800) 252-8014



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 391. PURCHASE OF GOODS AND SERVICES BY THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

The Texas Health and Human Services Commission (HHSC) adopts amendments to §391.101, concerning Purpose; §391.103, concerning Authority; §391.105, concerning Exceptions; §391.107, concerning Definitions; §391.201, concerning Procurement Methods; §391.203, concerning Spot Purchases; §391.205, concerning Competitive Bidding through Informal Bidding; §391.207, concerning Competitive Sealed Bidding through Invitation for Bids; §391.209, concerning Request for Proposals; §391.211, concerning Request for Qualifications; §391.213, concerning Request for Offers; §391.215, concerning Proprietary Purchases; §391.217, concerning Emergency Purchases; §391.219, concerning Award Notification; §391.241, concerning Contracting and Delivery Procedures for Construction; §391.303, concerning Applicability; §391.309, concerning Contract Awards During Protest; §391.503, concerning Mandatory Review of Historically Underutilized Business Subcontracting Plan; §391.601, concerning Open Enrollment Contracts; and

new §391.245, concerning Group Purchasing Organizations Program; and §391.247, concerning Direct Contract Award.

New §391.247 is adopted with changes to the proposed text as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 613). This rule will be republished. The amendments to §§391.101, 391.103, 391.105, 391.107, 391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.219, 391.241, 391.303, 391.309, 391.503, 391.601; and new §391.245 are adopted without changes to the proposed text as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 613). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to implement Senate Bill (S.B.) 799 and S.B. 1896, 87th Texas Legislature, Regular Session, 2021. S.B. 799 made changes to laws relating to contracting procedures and requirements for governmental entities, effective September 1, 2021. S.B. 1896 classified the Department of Family and Protective Services (DFPS) as a health and human services agency subject to the procurement authority under Texas Government Code §2155.144, effective June 14, 2021.

The adopted new rules are necessary to implement the purchase of goods and services made through group purchasing organizations as authorized by Texas Government Code §2155.144 and §2155.1441.

The adopted rules include other non-substantive edits and revisions.

COMMENTS

The 31-day comment period ended March 14, 2022.

During this period, HHSC did not receive any comments regarding the proposed rules.

A minor editorial change was made to §391.247(c) to correct a statutory reference.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§391.101, 391.103, 391.105, 391.107

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201508

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



SUBCHAPTER B. PROCUREMENT AND SPECIAL CONTRACTING METHODS

DIVISION 1. PROCUREMENT METHODS

1 TAC §§391.201, 391.203, 391.205, 391.207, 391.209, 391.211, 391.213, 391.215, 391.217, 391.219

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201507

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



DIVISION 2. SPECIAL CONTRACTING METHODS

1 TAC §§391.241, 391.245, 391.247

STATUTORY AUTHORITY

The amendment and new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC

to adopt rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

§391.247. Direct Contract Award.

(a) Texas HHSC Office of Inspector General (OIG) direct contract award. If HHS does not receive any responsive proposals on a competitive solicitation for the services of a qualified expert to review investigative findings under Texas Government Code §531.102(l) or §531.102(m), HHS may instead award contracts that are not subject to competitive advertising and proposal evaluation requirements. HHS may negotiate with and award a contract to a qualified expert based on:

- (1) the contractor's agreement to set a fee (range or lump-sum); and
- (2) the contractor's affirmation and the OIG's verification that the contractor has the necessary occupational licenses and experience.

(b) OIG direct contract awards not subject to competitive advertising. In accordance with Texas Government Code §531.102(m-1) and §531.102(m-2), and notwithstanding Texas Government Code §2155.083 and §2261.051, a contract awarded under subsection (a) of this section is not subject to competitive advertising and proposal evaluation requirements.

(c) HHSC state operated facilities direct contract award. If HHSC does not receive any responsive competitive bids or proposals in response to a solicitation for goods or services for a state hospital or a state supported living center as defined by Texas Health and Safety Code §531.002, HHSC, after the procurement director makes a written determination that competition is not available, may negotiate with and award a contract to any qualified vendor who meets the requirements of the original solicitation. The contract must be at current market value price and the term may not exceed five years.

(d) Direct contract award for professional services of physicians, optometrists, and registered nurses. If procuring services in connection with professional employment or practice of a physician, optometrist, or registered nurse as defined by Texas Government Code §2254.002(2)(B)(v), (vi), or (ix) and the number of contracts is not otherwise limited, HHS, DFPS, and TCCO may make the selection and award based on:

- (1) the provider's agreement to a set fee, as a range or lump sum amount; and
- (2) the provider's affirmation and the HHS, DFPS, or TCCO's verification that the provider has the necessary occupational licenses and experience.

(e) Professional services for physicians, optometrists, and registered nurses not subject to competitive advertising. In accordance with Texas Government Code §2254.008, and notwithstanding Texas Government Code §2155.083 and §2261.051, a contract awarded under subsection (d) of this section is not subject to competitive advertising and proposal evaluation requirements.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201509

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Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



SUBCHAPTER C. PROTESTS

1 TAC §391.303, §391.309

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201510

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



SUBCHAPTER E. HISTORICALLY UNDERUTILIZED BUSINESSES

1 TAC §391.503

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC to adopt

rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201512

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



SUBCHAPTER F. CONTRACTS

1 TAC §391.601

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §2155.144(g), which allows HHSC to adopt rules and procedures for the procurement and acquisition of goods and services under the section; and Texas Government Code §2155.144(h), which requires HHSC to adopt rules and procedures for the acquisition of goods and services that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program.

The adopted rules implement Texas Government Code §§531.0055, 531.102(m-1) and (m-2), 2155.076, 2155.132(e), 2155.144(a), 2155.144(g), 2155.144(h), 2155.144(o), 2155.1441, and 2254.008.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201513

Karen Ray

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Texas Health and Human Services Commission

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 406-2500



TITLE 7. BANKING AND SECURITIES
PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments concerning §33.7, how to obtain an exemption from licensing related to exchanging currency in connection with retail, wholesale or service transactions; §33.23, additional provisions that apply to permissible investments; §33.27, fees to obtain and maintain a license; §33.33, receipts issued relating to currency exchange transactions; §33.37, receipts issued relating to money transmission transactions; §33.51, providing information to customers on how to file a complaint; and, §33.54, an exemption from licensure for securities dealers and agents. These amendments are adopted without changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1043). The amended rules will not be republished.

The amended rules arise from rule review conducted pursuant to Texas Government Code §2001.039 and provide clarity, correct statutory citations and certain scrivener's errors, and maintain consistent formatting within the chapter.

The department received no comments regarding the proposed amendments. Notice of the intent to amend §33.27 was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule has the potential to affect market competition. The Division approved the amendment without further revision.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 151.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201567

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: May 12, 2022

Proposal publication date: March 4, 2022

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



PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of 7 TAC §80.204, Books and Records. The commission further adopts a new rule concerning the same or similar subject matter at 7 TAC §80.204, Books and Records. The commission's proposal was published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1145). The rules are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The rules in 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The department, under Chapter 156, licenses residential mortgage loan companies that originate residential mortgage loans (a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers (for purposes of the adopted rules, "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). A mortgage company acts by and through one or more individuals licensed by the department as a residential mortgage loan originator under Finance Code Chapters 157 and 180 (originator).

Books and Recordkeeping Changes

Pursuant to Finance Code §156.301(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of a mortgage company or an originator sponsored by a mortgage company (sponsored originator) to determine compliance with the requirements of Chapter 156 and the rules adopted thereunder. Inspections include inspection of the mortgage company's or sponsored originator's "books, records, documents, operations, and facilities . . . and access to any documents required under rules adopted under [Chapter 156]" (Finance Code §156.301(a)). Pursuant to Finance Code §156.301(b), the commissioner, upon receipt of a signed written complaint against a mortgage company, "shall investigate the actions and records" of the mortgage company or its sponsored originator. Pursuant to Finance Code §156.301(e), the commission "by rule shall . . . determine the information and records to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §156.102(c), the commission "may adopt rules regarding books and records that a [mortgage company] is required to keep, including the location at which the books and records must be kept." Preexisting §80.204 establishes requirements concerning the books and records that a mortgage company must maintain. The adopted rules: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify preexisting requirements concerning the mortgage transaction log a mortgage company is required to maintain under preexisting §80.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand a preexisting requirement under preexisting §80.204 by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); and (iv) clarify preexisting requirements concerning the books

and records that a mortgage company must maintain under preexisting §80.204 by specifically identifying certain records a mortgage company is required to maintain to comply with the requirements of applicable state law (other than the adopted rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of preexisting §80.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or April 10, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

7 TAC §80.204

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §156.102(a) and (a-1), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.).

The adopted rule repeal affects the statutes contained in Finance Code Chapter 156.

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

Filed with the Office of the Secretary of State on April 24, 2022.

TRD-202201596

Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

Effective date: May 14, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 475-1535



7 TAC §80.204

Statutory Authority

The rule is adopted under the authority of: Finance Code §156.102(a) and (a-1), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.); and Finance Code §156.102(c), authorizing the commission to adopt rules regarding books

and records that a person licensed under Finance Code 156 is required to keep, including the location at which the books and records must be kept. The rule is also adopted under the authority of, and to implement, Finance Code §156.301.

The adopted rule affects the statutes contained in Finance Code Chapter 156.

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

Filed with the Office of the Secretary of State on April 24, 2022.

TRD-202201597

Iain A. Berry

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Department of Savings and Mortgage Lending

Effective date: May 14, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 475-1535



**CHAPTER 81. MORTGAGE BANKERS
AND RESIDENTIAL MORTGAGE LOAN
ORIGINATORS**

**SUBCHAPTER C. DUTIES AND
RESPONSIBILITIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal 7 TAC §81.204, Books and Records. The commission further adopts a new rule concerning the same or similar subject matter at 7 TAC §81.204, Books and Records. The commission's proposal was published in the March 11, 2022, issue the *Texas Register* (47 TexReg 1150). The rules are adopted without changes to the proposed text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The department, under Chapter 157, registers mortgage bankers (for purposes of the adopted rules, "mortgage banker" has the meaning assigned by Finance Code §157.002). Under Chapter 157 and the Texas SAFE Act the department also licenses individuals to act a residential mortgage loan originator (originator). Mortgage bankers and originators (acting on behalf of either a mortgage banker or a residential mortgage loan company licensed by the department under Finance Code Chapter 156 (mortgage company)) originate residential mortgage loans (a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers.

Books and Recordkeeping Changes

With respect to originators, pursuant to Finance Code §157.021(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of an originator to determine compliance with Chapter 157 and the Texas

SAFE Act, or the rules of the department adopted thereunder. Inspections include inspection of the originator's "books, records, documents, operations, and facilities" (Finance Code §157.021(a)). Pursuant to Finance Code §157.021(b), the commissioner, upon receipt of a signed written complaint against an originator, "shall investigate the actions and records" of the originator. Pursuant to Finance Code §157.021(e), the commission "by rule shall . . . determine the information and records [of the originator] to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §157.02015(b), the commission "may adopt rules regarding books and records that [an originator] is required to keep, including the location at which the books and records must be kept." With respect to mortgage bankers, pursuant to Finance Code §157.0022, the commissioner "may request documentary and other evidence [from a mortgage banker] considered by the commissioner as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." In conducting an inspection of an originator the commissioner may also "request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records" (Finance Code §157.021(a)). Preexisting §81.204 establishes requirements concerning the books and records that a mortgage banker and an originator must maintain. The adopted rules: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify preexisting requirements concerning the mortgage transaction log an originator is required to maintain under preexisting §81.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand a preexisting requirement under preexisting §81.204 by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); (iv) clarify preexisting requirements concerning the books and records that an originator must maintain under preexisting §81.204 by specifically identifying certain records an originator is required to maintain to comply with the requirements of applicable state law (other than the adopted rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law; and (v) establish a new requirement for a mortgage banker to maintain records concerning its general business operations, and simultaneously repeal such requirement as it pertains to originators under preexisting §81.204 as being inapplicable to an originator when considering that, in practice, such records are actually maintained in the ordinary course of business by the mortgage banker or mortgage company sponsoring the originator.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of preexisting §81.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or April 10, 2022. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

7 TAC §81.204

Statutory Authority

The rule repeal is adopted under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purpose of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.).

The adopted rule repeal affects the statutes contained in Finance Code Chapters 156 and 180.

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

Filed with the Office of the Secretary of State on April 24, 2022.

TRD-202201598

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Department of Savings and Mortgage Lending

Effective date: May 14, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 475-1535



7 TAC §81.204

Statutory Authority

The rule is adopted under the authority of: Finance Code §157.0023(a) and (c), authorizing the commission to adopt rules necessary to implement or fulfill the purpose of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.); and Finance Code §157.02015(b), authorizing the commission to adopt rules regarding books and records that a person licensed under Finance Chapter 157 is required to keep, including the location at which the books and records must be kept. The rule is also adopted under the authority of, and to implement, Finance Code §§157.0022(b), 157.003(b)(6), and 157.021.

The adopted rule affects the statutes contained in Finance Code Chapters 156 and 180.

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

Filed with the Office of the Secretary of State on April 24, 2022.

TRD-202201599



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) adopts amendments to §83.101 (relating to Purpose and Scope), §83.205 (relating to Loans by Mail and Internet), §83.301 (relating to Definitions), §83.308 (relating to Relocation), §83.404 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.504 (relating to Default Charges), §83.602 (relating to Default Charges), §83.703 (relating to Default Charges), and §83.834 (relating to Unclaimed Funds) in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §83.101, §83.301, §83.308, §83.504, §83.602, §83.703, and §83.834 without changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1045). These rules will not be republished.

The commission adopts the amendments to §83.205 and §83.404 with changes to the proposed text as published in the March 4, 2022, issue of the *Texas Register* (47 TexReg 1045). These rules will be republished.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders. In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In November 2021, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the *Texas Register* on December 3, 2021, (46 TexReg 8261). The commission received two official comments in response to that notice. Both of these official comments deal with whether the commission should amend the maximum administrative fee in §83.503 (relating to Administrative Fee). The OCCC intends to study this issue further.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received five precomments on the rule text draft. The five precomments deal with whether the commission should amend the maximum administrative fee in §83.503. The OCCC intends to study this issue further.

Amendments to §83.101 ensure that language about the scope of the rules is consistent with amendments in HB 1442, which the Texas Legislature passed in 2019. HB 1442 amended Texas Finance Code, §342.005 to state that Chapter 342 applies to a consumer loan made to a person who is located in Texas at

the time the loan is made. To be consistent with this statutory amendment, the adoption adds the phrase "to a person located in Texas at the time the loan is made" in subsection (b)(1)(B). The adoption also removes the phrase "or secured by a lien on real estate" in subsection (b)(1)(C)(i). This phrase is unnecessary, because subsection (b)(1)(C)(ii) specifies that the rules apply to a secondary mortgage loan, which is the type of real-estate-secured loan that is subject to Chapter 342 (and therefore subject to the rules).

Amendments to §83.205 ensure that language about online loans is consistent with amendments in HB 1442 (2019). HB 1442 added the words "or online" to Texas Finance Code, §342.053(b), which deals with loans by mail. As a result of the amendment, Texas Finance Code, §342.053(b) now states: "A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office." This adoption adds the words "or online" in §83.205(b) and (c), to use wording that is consistent with the statute. The adoption removes previous subsection (d), which provided that an internet loan is considered a "loan by mail," because this language is no longer necessary due to the other changes to §83.205. The adoption also amends the title of the section to replace "and Internet" with "or Online," to use wording that is consistent with the statute.

Since the proposal, a change has been made to add the phrase "or online" in the second sentence of §83.205(c), in order to ensure consistency with the changes described in the previous paragraph.

Amendments to §83.301 update the definition of "net assets." The amendment explains that debt may be subordinated to the net asset requirement under certain conditions. This ensures consistency with other OCCC rules regarding net assets. This also ensures consistency with Texas Attorney General Opinion No. DM-332 (1995).

Amendments to §83.308 relate to notifying debtors when a licensed lender relocates. Previously, §83.308(b) required licensees to mail a notice to all debtors before relocation of an office. An amendment to §83.308(b) explains that a licensee may send this notice by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. The commission believes that this change will improve licensees' ability to use electronic communication to ensure compliance. This change responds to an informal comment that proposed revising this subsection to allow electronic notice.

Amendments to §83.404 relate to the OCCC's review of the criminal history of a regulated lender applicant or licensee. The OCCC is authorized to review criminal history of regulated lender applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The amendments to §83.404 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections

(c) and (f) of §83.404 implement these statutory changes from HB 1342. Other amendments to §83.404 include technical corrections, clarifying changes, and updates to citations.

Since the proposal, a change has been made to correct a citation in §83.404(d). In this subsection, an adopted amendment replaces "(f)(2)" with "(f)(1)." This technical correction is necessary because previous subsection (f)(1) is being deleted in order to implement statutory changes described in the previous paragraph.

Amendments to §83.504, §83.602, and §83.703 remove references to the Federal Reserve Board's Regulation AA. The Federal Reserve Board repealed this rule in 2016. 81 Fed. Reg. 8133 (Feb. 18, 2016). The amendments to §83.504, §83.602, and §83.703 maintain current references to the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.4, and therefore do not affect the current prohibition on pyramiding late charges.

Amendments to §83.834(d) make technical changes relating to the escheat of unclaimed funds. Amended text in this subsection (d) reflects that unclaimed funds are submitted to the "Unclaimed Property Division" of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

The commission received no official comments on the proposed amendments.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.101

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201575

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Effective date: May 12, 2022

Proposal publication date: March 4, 2022

For further information, please call: (512) 936-7660



DIVISION 2. AUTHORIZED ACTIVITIES

7 TAC §83.205

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt

rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.205. Loans by Mail or Online.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail or online must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail or online must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail or online to Texas residents and are considered to meet the definition of authorized lender as contained in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the OCCC;

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state and insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state and insured through the National Credit Union Share Insurance Fund.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201576

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Effective date: May 12, 2022

Proposal publication date: March 4, 2022

For further information, please call: (512) 936-7660



DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.301, §83.308

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201577

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Effective date: May 12, 2022

Proposal publication date: March 4, 2022

For further information, please call: (512) 936-7660



DIVISION 4. LICENSE

7 TAC §83.404

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.404. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Fi-

nance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

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

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

(D) the relationship of the crime to the ability or capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

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

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

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

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

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;

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

(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(1) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(2) errors or incomplete information in the license application;

(3) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(4) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201578

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Effective date: May 12, 2022

Proposal publication date: March 4, 2022

For further information, please call: (512) 936-7660



DIVISION 5. INTEREST CHARGES ON LOANS

7 TAC §83.504

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201579

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Effective date: May 12, 2022

Proposal publication date: March 4, 2022

For further information, please call: (512) 936-7660



DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.602

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201580

Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: May 12, 2022
Proposal publication date: March 4, 2022
For further information, please call: (512) 936-7660



DIVISION 7. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §83.703

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201581
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: May 12, 2022
Proposal publication date: March 4, 2022
For further information, please call: (512) 936-7660



DIVISION 10. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §83.834

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201582

Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: May 12, 2022
Proposal publication date: March 4, 2022
For further information, please call: (512) 936-7660



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §25.505 relating to Reporting Requirements and the Scarcity Pricing Mechanism in the Electric Reliability Council of Texas Power Region without changes and adopts new 16 TAC §25.505 relating to Resource Adequacy Reporting Requirements in the ERCOT Power Region, new 16 TAC §25.506 relating to Publication of Resource and Load Information in the Electric Reliability Council of Texas Power Region, and new 16 TAC §25.509 relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region. The commission adopts these rules with changes to the proposed rules as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1161). The rules will be republished.

The adopted rules separate the provisions of repealed §25.505 into three new rules. Specifically, new §25.505 prescribes resource adequacy reporting requirements in the Electric Reliability Council of Texas (ERCOT) region and requires ERCOT to submit to the commission a biennial report on the operating reserve demand curve, new §25.506 sets forth the requirements for the publication of resource and load information in ERCOT, and new §25.509 establishes a scarcity pricing mechanism for the ERCOT market.

The commission received comments on the proposed rule from Texas Competitive Power Advocates (TCPA), Texas Public Power Association (TPPA), Texas Electric Cooperatives, Inc. (TEC), Vistra Corp. (Vistra), and South Texas Electric Cooperative, Inc. (STEC).

For reasons discussed below, the subsections of each adopted rule have been renumbered. In this preamble, provisions of the rule as proposed and published in the *Texas Register* will be referred to as "proposed," provisions in the rule as adopted by the commission will be referred to as "adopted," and provisions of the version of §25.505 that is being repealed will be referred to as "repealed." This preamble is organized according to the proposed rule.

General Comments

TCPA commented that the operating reserve demand curve (ORDC) reporting requirement under proposed §25.509(c)(8) may better fit under new §25.505 along with other resource adequacy reporting requirements.

Commission Response

The commission agrees with TCPA that the ORDC reporting requirements are more appropriately placed in §25.505 with the other resource adequacy reporting requirements and relocates the provision accordingly.

Proposed §25.505(a) - General

Proposed subsection (a) contains language describing the purpose of §25.505. The commission strikes this subsection and renumbers subsequent subsections accordingly. This change is made to align this proposed rule with recent commission rule-making trends and eliminate unnecessary rule provisions. The purpose of this section is evident from its title.

Proposed §25.505(b) - Definitions

Proposed §25.505(b) defines "generation entity" and "load entity" as an entity that owns or controls a generation resource and a load resource, respectively. "Generation resource" and "load resource" are defined within the definitions of generation entity and load entity.

TPPA recommended that for clarity the terms "generation resource" and "load resource" should be defined separately from the definitions of "generation entity" and "load entity."

Commission Response

The commission agrees with TPPA and removes the definitions of generation resource and load resource from the definitions of generation entity and load entity as recommended. Each of the four terms has a separate definition in the adopted rule. The commission makes a corresponding change to these definitions under adopted §25.509(a).

Proposed §25.505(b)(1) - "Generation entity"

Proposed §25.505(b)(1) and §25.509(b)(1) define the term "generation entity" as an entity that owns or controls a generation resource. The definition also specifies that a generation resource is a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

TCPA and Vistra commented that the definition of "generation entity" under proposed §25.505(b)(1) and §25.509(b)(1) should include language regarding energy storage resources for clarity and to be consistent with the definition of "generation entity" under §25.55 (relating to Weather Emergency Preparedness) which incorporates the term energy storage resource. TCPA and Vistra stated that, as proposed, the rule risks excluding energy storage resources because the defined term "Resource" has several different meanings under the ERCOT Protocols and could mean a resource other than an energy storage resource such as a generation resource or load resource. Accordingly, TCPA recommended adding "or an energy storage resource" to the end of the definition of "generation entity".

TCPA also commented that proposed §25.505(b) should incorporate the definition of "non-dispatchable resources" established by Senate Bill 3 (SB 3) under PURA §39.159 for clarity as the term is utilized in proposed subparagraph 25.505(e)(4)(B). TCPA provided draft language consistent with its response, defining "non-dispatchable resources" as "a resource for which the facility's output is controlled primarily by forces outside of human control" which paraphrases PURA §39.159.

Commission Response

The commission declines to define non-dispatchable resources or address energy storage resources in the definition of genera-

tion entity. Each of these resource categories are important and merit fuller consideration than is appropriate for this limited rule-making project. The commission does not share the concern of commenters asserting that energy storage resources need to be addressed in the adopted rule to avoid potential confusion or because of the different resource categories in the ERCOT Nodal Protocols. The repealed version of §25.505 did not address energy storage resources. The substantive provisions of the three new rules apply to the same resources that the equivalent provisions of repealed §25.505 applied to previously. The commission will further address these issues, as appropriate, in future rulemaking proceedings.

Proposed §25.505(c) and (d) - Resource adequacy reports and daily assessment of system adequacy

Proposed §25.505(c) requires ERCOT to publish annually a resource adequacy report containing a five-year projection of existing and planned electric generation and load resources in the ERCOT power region and prescribe requirements for generation, transmission service providers, and load entities to report plans to add, upgrade, or retire existing facilities or resources.

Proposed §25.505(d) requires ERCOT to publish daily an hourly-hour forecast of system-wide load and resource availability by ERCOT load zone, including load resources.

TPPA recommended that the five-year resource adequacy report and daily assessment of system reliability required by ERCOT under proposed §25.505(c) and (d) should be made publicly available and easily accessible.

TEC supported enhancements to resource adequacy reporting. In their comments, TEC elaborated on several potential report enhancements, including incorporating trends around peak net load, better reflecting how the changing resource mix implicates reliability on a seasonal basis, refining the relative capacity contributions of different resource types, evaluating impacts of the impending integration of large loads, formatting of the reports for better ease-of-use, and continuing ERCOT's efforts to employ probabilistic analysis of resource adequacy. TEC also commented that due to the inherent limitations of forecasts, the five-year resource adequacy report required by ERCOT under proposed §25.505(c) should be "properly contextualized" via discussion in the ERCOT stakeholder process or in Project No. 53298.

Commission Response

The commission declines to make changes in response to these comments. Changes to resource adequacy reporting are beyond the limited scope of this rulemaking project. TEC and TPPA may re-urge their comments in the commission's upcoming project on resource adequacy reporting.

Proposed §25.505(f) - Development and implementation

Proposed §25.505(f) requires ERCOT to use a stakeholder process in consultation with commission staff to develop and implement rules that comply with §25.505.

TCPA commented that the phrase "in consultation with commission staff" as used in proposed §25.505(f) should be revised to avoid confusion. Specifically, TCPA stated that the rule should clarify that ERCOT's consultation with staff will be as a stakeholder.

TPPA requested that the rule indicate the timeline and process by which consultation with commission staff under §25.505(f) will occur. TPPA argued that ERCOT should be required, before

developing a revision request to be implemented under this rule, to consult with commission staff.

TEC argued that formalizing commission staff's role in rules under §25.505(f) creates some ambiguity and requires clarification on how consultation with commission staff will take place. TEC stated that further clarification in the ERCOT Protocols may be required to clarify staff's role in the process. TEC commented that it is not aware of any other commission rules that require ERCOT consultation with commission staff and noted that limiting "the consultation function to {proposed §25.505(f), §25.506(c), and §25.509(d)}" could be construed to mean that ERCOT is only required to consult commission staff on issues related to those sections.

Commission Response

The commission declines the request from commenters to modify the "in consultation with commission staff" language. Language that specifies when and how commission staff will participate in the development and implementation of these rules is unnecessarily prescriptive. This requirement reflects the commission's general expectation that ERCOT keep commission staff informed as ERCOT develops and implements rules and that ERCOT takes any feedback provided by commission staff into consideration.

The commission disagrees that this provision creates a presumption that ERCOT is only required to consult with commission staff regarding these particular rules. ERCOT and commission staff regularly meet on a wide variety of topics and this provision merely acknowledges and codifies this existing relationship. The commission may modify other rules, as appropriate, to reflect this consultation process in future rulemaking projects.

The commission also disagrees that this consultation requirement does not exist in other rules. For example, §25.503 (relating to Oversight of Wholesale Market Participants) contains several similar provisions. Under §25.503(f)(12), all market participants must cooperate with the ERCOT subcommittees, ERCOT staff, and commission staff to develop Protocols that are clear and consistent. Similarly, under §25.503(i)(3) and (4), ERCOT must provide copies of protocol clarification requests to commission staff, upon request, and "may decide, in consultation with commission staff, that the language for which clarification is requested is ambiguous or for other reason beyond ERCOT's ability to clarify... {emphasis added}."

Proposed §25.506(a) - Purpose

Proposed subsection (a) contains language describing the purpose of §25.506. The commission strikes this subsection and renumbers subsequent subsections accordingly. This change is made to align this proposed rule with recent commission rule-making trends and eliminate unnecessary rule provisions. The purpose of this section is evident from its title.

Proposed §25.506(c) - Development and implementation

Proposed §25.506(c) requires ERCOT to use a stakeholder process in consultation with commission staff to develop and implement rules that comply with §25.506.

TCPA commented that the phrase "in consultation with commission staff" as used in proposed 25.506(c) should be revised to avoid confusion. Specifically, TCPA stated that the rules should clarify that ERCOT's consultation with staff will be as a stakeholder.

TPPA requested that the rule indicate the timeline and process by which consultation with commission staff under §25.506(c) will occur. TPPA argued that ERCOT should be required, before developing a revision request to be implemented under this rule, to consult with commission staff.

TEC argued that formalizing commission staff's role in rules under proposed §25.506(c) creates some ambiguity and requires clarification on how consultation with commission staff will take place.

Commission Response

The commission declines the request from commenters to modify the "in consultation with commission staff" language for the reasons provided in the commission's response to comments made to proposed §25.505(f).

Proposed §25.509(a) - General

Proposed subsection (a) contains language describing the purpose of §25.509. The commission strikes this subsection and renumbers subsequent subsections accordingly. This change is made to align this proposed rule with recent commission rule-making trends and eliminate unnecessary rule provisions. The purpose of this section is evident from its title.

Proposed §25.509(b) - Definitions

Proposed §25.509(b) defines "generation entity" and "load entity" as an entity that owns or controls a generation resource and a load resource, respectively. "Generation resource" and "load resource" are defined within the definitions of generation entity and load entity.

TPPA recommended that for clarity the terms "generation resource" and "load resource" should be defined separately from the definitions of "generation entity" and "load entity."

Commission Response

The commission agrees with TPPA and removes the definitions of generation resource and load resource from the definitions of generation entity and load entity as recommended. Each of the four terms has a separate definition in the adopted rule. The commission makes a corresponding change to these definitions under adopted §25.505(a).

Proposed §25.509(b)(1) - "Generation entity"

Proposed §25.509(b)(1) defines the term "generation entity" as an entity that owns or controls a generation resource. The definition also specifies that a generation resource is a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

TCPA and Vistra commented that the definition of "generation entity" under proposed §25.505(b)(1) and §25.509(b)(1) should include language regarding energy storage resources. TCPA also commented that proposed §25.505(b) should incorporate the definition of "non-dispatchable resources" established by Senate Bill 3 (SB 3) under PURA §39.159 for clarity as the term is utilized in proposed subparagraph 25.505(e)(4)(B). The arguments made in support of these positions are more fully outlined in the summary of comments made to proposed §25.505(b) above.

Commission Response

The commission declines to define non-dispatchable resources or address energy storage resources in the definition of gener-

ation entity for the reasons discussed in the commission's response to comments made to proposed §25.505(b).

Proposed §25.509(b)(6) - System-Wide Offer Caps

Proposed §25.509 establishes a scarcity pricing mechanism for the ERCOT market. Proposed paragraph 25.509(c)(6) prescribes the system wide offer cap (SWOC), which is a sub-component of the scarcity pricing mechanism. The proposed rule does not include a provision of repealed §25.505 that set the value of lost load (VOLL) at the SWOC, effectively decoupling the two values.

STEC opposed decoupling VOLL from the SWOC until the commission performed a comprehensive study on the SWOC, VOLL, and the ORDC. Specifically, STEC recommended the commission perform a larger holistic study of ERCOT's "energy-only market, scarcity pricing, and the impact on dispatchable generation, part of which would be an evaluation of the consequences of decoupling the SWOC from the VOLL." STEC emphasized that studies from the time VOLL was set, and information available today continue to demonstrate that the true VOLL is significantly greater than \$9,000/MWh and that "the \$9,000/MWh value was never a reasonable estimation of VOLL in the ERCOT market." Lastly, STEC urged the commission to holistically evaluate VOLL and the SWOC to "promote consistent and meaningful revenue streams to existing and new dispatchable generation."

TCPA requested the commission clarify in the preamble that SWOC calculations do not consider the VOLL and therefore should not be interpreted as an estimate of or proxy for VOLL. TCPA further recommended the commission expand the rule language to ensure that the ORDC reporting by ERCOT provides holistic context to the commission by considering interactions between the ORDC and other activities.

Vistra and TEC expressed support for decoupling VOLL from the SWOC. TEC also urged the commission to continue with the decoupling effort within the wholesale electric market design implementation in Project Number 53298 and further consider its potential market-enhancing effects as it is an important upcoming market design feature.

Commission Response

While the commission acknowledges the need for further analysis to establish a new VOLL long-term, the commission disagrees with STEC's perspective that VOLL and SWOC should not be decoupled before such a study is conducted. As TEC pointed out, the commission's market design blueprint includes a directive to establish a new VOLL. The adopted language will not itself change VOLL from the current \$5,000 per MWh, but will permit future changes. Such future changes to VOLL will be guided by a more comprehensive study.

The commission disagrees with TCPA that language is needed to explicitly state that VOLL is not coupled with the calculation of SWOC.

TPPA argued that the rule should require VOLL to be clearly posted and available to market participants and the public. TPPA elaborated that codifying VOLL in §25.509 would improve regulatory certainty and clarity to the market and investors, and that "simply removing the reference to VOLL equaling the SWOC creates uncertainty about what the VOLL is and what it will be going forward."

TPPA expressed understanding that a future rulemaking will address the decoupling of VOLL from the SWOC but argued that,

as an intermediate step before that rulemaking, the commission should reinstate a modified version of repealed subsection §25.505(g)(6)(E). TPPA stated this modified provision would explicitly set the VOLL at \$5,000 per MWh and therefore "accomplish the commission's immediate goal of decoupling VOLL from SWOC while otherwise maintaining the status quo."

TEC stated that §25.509, not §25.505, is the appropriate rule for implementing PURA §39.160, which establishes an emergency pricing program, and requested that the commission move forward with a project implementing the requirements of that section.

Commission Response

The commission disagrees with TPPA that intermediate language explicitly setting the VOLL at \$5,000 should be included in the rule. The VOLL is currently set at \$5,000 and will remain so until a change is authorized by the commission. Codifying the VOLL in rule would be contrary to the commission's discretion to adjust the VOLL through other means as a part of its market redesign process, as it can do with other ORDC inputs.

The commission will address the requirements of PURA §39.160 in a future rulemaking project.

Proposed §25.509(c)(7) - Reimbursement for operating losses when the LCAP is in effect

Proposed §25.509(c)(7) requires ERCOT to reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. Proposed §25.509(c)(7) further requires ERCOT to use existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

TCPA and Vistra commented that the commission should replace the phrase "actual marginal costs" with "reasonable, verifiable operating costs" in proposed §25.509(c)(7) to properly reflect the statutory language of PURA §39.160. TCPA explained that during extreme operating events, "generators regularly incur additional operating expenses in support of grid reliability that may not be strictly considered to be 'marginal costs.'" TCPA argued that PURA §39.160(g) is clear that, when generators are operating to support grid reliability in extreme events, generators should not be forced to operate at a loss. TCPA further stated that preventing generators from operating at a loss during extreme events is "critical to maintaining the economic viability of the market."

Vistra additionally urged the commission to develop its emergency pricing program and publish a timeframe to adopt the rule governing the program.

Commission Response

The changes to this subsection proposed by TCPA and Vistra are beyond the limited scope of this project. The commission's current LCAP formula is not intended to implement the emergency pricing program required by PURA §39.160, and the requirements of that provision do not apply to the LCAP formula. Moreover, the commission adopted the current LCAP formula after the legislature adopted PURA §39.160 and, accordingly, already considered whether it should base the LCAP formula on the provisions of that section.

The commission will address PURA §39.160, and may reconsider the LCAP formula, in a future rulemaking project.

Proposed §25.509(c)(8) - Operating reserve demand curve report

Proposed §25.509(c)(8) requires ERCOT to publish by November 1 of each even numbered year, a report analyzing the efficacy, utilization, related costs, and contribution of the ORDC to grid reliability in the ERCOT power region.

TPPA commented that §25.509(c)(8) should include a requirement for ERCOT to publicly publish its biennial ORDC report.

TEC commented that ERCOT's biennial ORDC report required under §25.509(c)(8) should include an analysis of the ORDC's contribution to wholesale prices and price volatility. TEC stated that "recent changes to the ORDC may be shown to reduce volatility in certain intervals and future adjustments could consider how modifying the curve impacts this aspect of market outcomes." Accordingly, TEC explained, an analysis of wholesale prices and price volatility would aid stakeholders and the commission in assessing the impact of the ORDC on risk and risk management in ERCOT.

TCPA requested that the report take into account any interactions between the ORDC and other ERCOT activities, such as ancillary service procurements and out-of-market actions including reliability unit commitments, emergency response service deployments, and use of transmission and distribution utility load management programs.

Commission Response

As discussed previously, the commission relocates this provision to §25.505 as recommended by TCPA.

The commission declines to modify the rule to specify a location for publication of the ORDC report. Commission staff and ERCOT will determine an appropriate location for the publication of this report.

The commission declines to implement changes recommended by TEC and TCPA to the language around the biennial ORDC report. The current language captures the requirement established in the commission's Phase I market design blueprint. Alterations to the biennial ORDC report may be considered in a future rulemaking project.

Proposed §25.509(g) - Development and implementation

Proposed §25.509(g) requires ERCOT to use a stakeholder process in consultation with commission staff to develop and implement rules that comply with §25.509.

TCPA commented that the phrase "in consultation with commission staff" as used in proposed 25.509(g) should be revised to avoid confusion. Specifically, TCPA stated that the rules should clarify that ERCOT's consultation with staff will be as a stakeholder.

TPPA requested that the rule indicate the timeline and process by which consultation with commission staff under §25.509(g) will occur. TPPA argued that ERCOT should be required, before developing a revision request to be implemented under this rule, to consult with commission staff.

TEC argued that formalizing commission staff's role in rules under proposed §25.509(g) creates some ambiguity and requires clarification on how consultation with commission staff will take place.

Commission Response

The commission declines the request from commenters to modify the "in consultation with commission staff" language for the reasons provided in the commission's response to comments made to proposed §25.505(f).

16 TAC §25.505

These rules are adopted under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. These rules are also adopted under PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions, and PURA §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT, responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201559

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Public Utility Commission of Texas

Effective date: May 11, 2022

Proposal publication date: March 11, 2022

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16 TAC §§25.505, 25.506, 25.509

These rules are adopted under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. These rules are also adopted under PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions, and PURA §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT, responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

§25.505. *Resource Adequacy Reporting Requirements in the Electric Reliability Council of Texas Power Region.*

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

(1) Generation entity--an entity that owns or controls a generation resource.

(2) Generation resource--a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(3) Load entity--an entity that owns or controls a load resource.

(4) Load resource--a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(5) Resource entity--an entity that is a generation entity or a load entity.

(b) Resource adequacy reports. ERCOT must publish a resource adequacy report by December 31 of each year that projects, for at least the next five years, the capability of existing and planned electric generation resources and load resources to reliably meet the projected system demand in the ERCOT power region. ERCOT may publish other resource adequacy reports or forecasts as it deems appropriate. ERCOT must prescribe requirements for generation entities and transmission service providers (TSPs) to report their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also must prescribe requirements for load entities to report their plans for adding new load resources or retiring existing load resources.

(c) Daily assessment of system adequacy. Each day, ERCOT must publish a report that includes the following information for each hour for the seven days beginning with the day the report is published:

(1) system-wide load forecast; and

(2) aggregated information on the availability of resources, by ERCOT load zone, including load resources.

(d) Filing of resource and transmission information with ERCOT. ERCOT must prescribe reporting requirements for resource entities and TSPs for the preparation of the assessment required by subsection (c) of this section. At a minimum, the following information must be reported to ERCOT.

(1) TSPs will provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities will provide ERCOT with information on planned and existing generation outages.

(3) Load entities will provide ERCOT with information on planned and existing availability of load resources, specified by type of ancillary service.

(4) Generation entities will provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) will provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(e) Operating Reserve Demand Curve (ORDC) report. ERCOT must publish, by November 1 of every even numbered year, a report analyzing the efficacy, utilization, related costs, and contribution of the ORDC to grid reliability in the ERCOT power region.

(f) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

§25.506. *Publication of Resource and Load Information in the Electric Reliability Council of Texas Power Region.*

(a) General Requirements. To increase the transparency of the ERCOT-administered markets, ERCOT must post the information required in this section at a publicly accessible location on its website. In no event will ERCOT disclose competitively sensitive consumption data. The information released must be made available to all market participants.

(1) ERCOT will post the following information in aggregated form, for each settlement interval and for each area where available, two calendar days after the day for which the information is accumulated:

(A) quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves;

(B) self-arranged energy and ancillary capacity services, for each type of service;

(C) actual resource output;

(D) load and resource output for all entities that dynamically schedule their resources;

(E) actual load; and

(F) energy bid curves, cleared energy bids, and cleared load.

(2) ERCOT will post the following information in entity-specific form, for each settlement interval, 60 calendar days after the day for which the information is accumulated, except where inapplicable or otherwise prescribed. Resource-specific offer information must be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT must post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource. ERCOT will use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) to determine the control of a resource and must include this information in its market operations data system.

(A) Offer curves (prices and quantities) for each type of ancillary service and for energy in the real time market, except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT will post the offer price and the name of the entity submitting the offer three calendar days after the day for which the information is accumulated.

(B) If the clearing prices for energy or any ancillary service exceeds a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other

ancillary service that is at or above a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, for that service and that interval must be posted seven calendar days after the day for which the offer is submitted.

(C) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point.

(D) The load and generation resource output, for each entity that dynamically schedules its resources.

(E) For each hour, transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data). Notwithstanding the provisions of this subparagraph and the provisions of subparagraphs (A) through (D) of this paragraph, ERCOT must release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if, in its sole discretion, it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data in this event must be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released must be made available simultaneously to all market participants.

(b) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

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

(1) Generation entity -- an entity that owns or controls a generation resource.

(2) Generation resource -- a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(3) Load entity -- an entity that owns or controls a load resource.

(4) Load resource -- a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(5) Resource entity -- an entity that is a generation entity or a load entity.

(b) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $RTEP - POC > 0$.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh and \$2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh and \$5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(c) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201560

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Effective date: May 11, 2022

Proposal publication date: March 11, 2022

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) adopts the repeal of §§74.41-74.44 and §§74.51-74.54, concerning graduation requirements. The repeals are adopted without changes to the proposed text as published in the December 17, 2021 issue of the *Texas Register* (46 TexReg 8421) and will not be republished. The adopted repeals remove high school graduation requirements that are outdated and no longer necessary.

REASONED JUSTIFICATION: The rules in Chapter 74, Subchapter D, outline the graduation requirements for students who entered Grade 9 in the 2001-2002, 2002-2003, or 2003-2004 school years. Graduation requirements outlined in Chapter 74, Subchapter E, apply to students who entered Grade 9 in the 2004-2005, 2005-2006, or 2006-2007 school years. The rules are being repealed since they are no longer needed.

The SBOE approved the proposed repeals for first reading and filing authorization at its November 19, 2021 meeting and for second reading and final adoption at its January 28, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will remove obsolete rules as soon as possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 17, 2021, and ended at 5:00 p.m. on January 21, 2022. The SBOE also provided an opportunity for registered oral and written comments at its January 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

Comment: One administrator recommended that the SBOE not repeal 19 TAC Chapter 74, Subchapters D and E, because there may still be students enrolled in recovery programs who are subject to these older graduation requirements.

Response: The SBOE disagreed with the suggestion to not repeal 19 TAC Chapter 74, Subchapters D and E. The board provided the following clarification. Individuals are subject to the graduation requirements that were in place at the time the student entered Grade 9. Repealing these rules would not prohibit a student who has not yet met their high school graduation requirements from fulfilling these credit requirements and obtaining a high school diploma.

SUBCHAPTER D. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2001-2002

19 TAC §§74.41 - 74.44

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025, which requires the SBOE to determine by rule the curriculum requirements that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.025.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201505

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Texas Education Agency

Effective date: May 10, 2022

Proposal publication date: December 17, 2021

For further information, please call: (512) 475-1497



SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004-2005

19 TAC §§74.51 - 74.54

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §28.025, which requires the SBOE to determine by rule the curriculum requirements that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.025.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201506

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 10, 2022

Proposal publication date: December 17, 2021

For further information, please call: (512) 475-1497



CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards. The amendment is adopted without changes to the proposed text as published in the February 11, 2022 issue of the *Texas Register* (46 TexReg 634) and will not be republished. The adopted amendment specifies the satisfactory scores for the following educator certification examinations: English Language Arts and Reading 4-8, Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12, and School Counselor.

REASONED JUSTIFICATION: Texas Education Code, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination.

The adopted amendment establishes passing standards for the English Language Arts and Reading 4-8, Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12, and School Counselor examinations. A standard-setting committee of educators developed recommended passing standards for each of these examinations. The amendment introduces initial passing standards one standard error measurement (SEM) below the committee's recommendations for one year to support the transition to implementation of new educator certification examinations.

The adopted amendment to Figure: §151.1001(b)(2) implements passing standards one SEM below the committee-recommended passing standard from September 2, 2022, through September 1, 2023, for both the selected-response and constructed-response sections of English Language Arts and Reading 4-8. The amendment also implements passing standards at the committee-recommended passing standard beginning September 2, 2023, for both sections.

The adopted amendment to Figure: §151.1001(b)(14) implements passing standards one SEM below the committee-recommended passing standard from May 3, 2022, through May 2, 2023, for both the selected-response and constructed-response sections of Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12. It also implements passing standards at the committee-recommended passing standard beginning May 3, 2023, for both sections.

The adopted amendment to Figure: §151.1001(c) implements passing standards one SEM below the committee-recommended passing standard from May 3, 2022, through May 2, 2023, for both the selected-response and constructed-response sections of the School Counselor examination. It also implements passing standards at the committee-recommended passing standard beginning May 3, 2023, for both sections.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 11, 2022, and ended March 14, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201504

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Texas Education Agency

Effective date: May 10, 2022

Proposal publication date: February 11, 2022

For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.2, 228.10, 228.30, 228.35

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§228.2, 228.10, 228.30, and 228.35, concerning requirements for educator preparation programs (EPPs). The amendments are adopted without changes to the proposed text as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9155) and will not be republished. The adopted amendments implement Senate Bills (SBs) 226 and 1590 and House Bills (HBs) 139 and 159, 87th Texas Legislature, Regular Session, 2021. The adopted amendments allow educator preparation programs (EPPs) the flexibility to conduct certain required formal observations virtually; provide for training requirements for all educators with regard to students with disabilities and virtual instruction and virtual learning; and allow service members, spouses, and veterans to get credit toward educator certification requirements for clinical and professional experience.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs in the preparation of candidates for Texas educator certification. The adopted amendments to Chapter 228 implement SBs 1590 and 226 and HBs 139 and 159, 87th Texas Legislature, Regular Session, 2021. The following is a description of the adopted amendments.

§228.2. Definitions.

The adopted new §228.2(34) implements HB 159, 87th Texas Legislature, Regular Session, 2021, to add *students with disabilities* for purposes of EPP requirements in preparing candidates for educator certification and to parallel its definition with that of *student with a disability* in TEC, §21.001(4), as added by HB 159.

A technical edit rennumbers §228.2(34) and (35) to §228.2(35) and (36).

§228.10. Approval Process.

The adopted new §228.10(a)(1)(J) implements HB 159, 87th Texas Legislature, Regular Session, 2021, by conditioning EPP approval and renewal of approval on the program, proving that it has met the requirements prescribed in Texas Education Code (TEC), §21.0443(b)(1) and (2), by showing that it has incorporated proactive instructional planning techniques throughout course work and across content areas, and that it has integrated inclusive practices for all students, including students with disabilities. The rule references TEC, §21.0443(b)(1) and (2), to incorporate by reference the statute's specific requirements for instructional planning techniques and inclusive practices.

Figure: 19 TAC §228.10(b)(1)

Under Component II: Admission, the adopted amendment to the figure reflects the current requirement in §227.10(a)(5) that an EPP has informed non-teacher applicants in writing of any certificate issuance deficiencies prior to admission by specifying the evidence that an EPP must provide during a continuing approval review to demonstrate compliance. The adopted amendment also reflects a technical edit to update the figure to match the current §227.10(a)(6)-(9). A technical edit that rennumbers the

figure to match the renumbering of §228.35(g)(1)-(9) is adopted in these amendments.

Adopted new Component X: Candidate Training and Support on Inclusive Practices for Students with Disabilities in Figure: 19 TAC §228.10(b)(1) implements HB 159, 87th Texas Legislature, Regular Session, 2021, by specifying the evidence that an EPP must provide during a continuing approval review to demonstrate compliance with §228.30(c)(9) and §228.35(e)(2)(A)(iii), (e)(2)(B)(ix), and (e)(8), which set out requirements for EPPs related to candidate training and support on instruction regarding students with disabilities, to the use of proactive instructional planning techniques and to evidence-based inclusive instructional practices.

§228.30. Educator Preparation Curriculum.

The adopted amendment to §228.30(c)(8) implements SB 226, 87th Texas Legislature, Regular Session, 2021, by adding virtual instruction and virtual learning to the list of topics that EPPs must include in their curriculum. The adopted amendment specifically references TEC, §21.001, to clarify that the definitions of *virtual instruction*, *virtual learning*, *digital literacy*, and *digital learning* are the same in the rule as in the statute.

The adopted new §228.30(c)(9) implements HB 159, 87th Texas Legislature, Regular Session, 2021, by specifying that EPP curriculum must include subject matter related to educating students with disabilities, including the use of proactive instructional planning techniques and evidence-based instructional practices. The rule references TEC, §21.044(a-1), to incorporate by reference the statute's specific requirements for the training an educator candidate must receive regarding teaching students with disabilities, including proactive instructional techniques and evidence-based instructional practices.

Two technical edits that are adopted in §228.30(d)(4) and (e) further define the cross reference to commissioner of education rules in 19 TAC Chapter 149.

§228.35. Preparation Program Coursework and/or Training.

The adopted amendment to §228.35(a)(5)(A) implements HB 139, 87th Texas Legislature, Regular Session, 2021, by adding "clinical and professional experience" training to the list of appropriate credit toward certification requirements that EPPs must develop criteria and procedures to allow. HB 139 allows state licensing agencies to give military service members, spouses, and veterans credit toward certification requirements for clinical and professional experience.

SB 1590, 87th Texas Legislature, Regular Session, 2021, requires the SBEC to propose rules allowing options for candidate observations that require EPPs to provide for no fewer than three in-person observations, or two in-person observations and two virtual observations that are equivalent in rigor to in-person observations. The adopted amendment to §228.35(g) implements SB 1590's requirement that virtual observations be equivalent in rigor to in-person options for formal observations by ensuring that virtual and in-person observations are similar in procedure and documentation. The adopted amendment clarifies that for each formal observation, whether face-to-face or virtual, the field supervisor at the EPP must participate in an individualized pre-observation conference with the candidate; document educational practices observed; provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; and provide a copy of the written feedback to the candidate's cooperating teacher or mentor.

Adopted new §228.35(g)(2) and adopted amendment to §228.35(g)(1)-(9) implement SB 1590 by providing for flexible options for EPPs to conduct some formal observations virtually for educator candidates. The adopted amendment to §228.35(g)(1) and the adopted addition of new §228.35(g)(2) maintain the current requirements for formal in-person observations and ensure the virtual observations are as rigorous as in-person observations, as required by SB 1590. The adopted amendment includes renumbering paragraphs (2)-(8) to paragraphs (3)-(9) in §228.35(g) to accommodate the addition of adopted new §228.35(g)(2). In addition, the text in renumbered paragraphs (4)(A), (5)(A), (6)(A) and (B), (7)(A), and (9)(A) reflect the same text as in rule but was formatted with underlined text to meet *Texas Register* requirements.

Adopted amendment to renumbered §228.35(g)(5)-(8), where the rules currently require three in-person observations, allows EPPs to conduct two in-person observations and two virtual observations instead. This implements the provision of SB 1590 that requires the options for candidate observations to provide for at least two observations to occur in person and two additional observations to occur in virtual settings that are equivalent in rigor to in-person observations, or three observations to occur in person.

Adopted amendment to renumbered §228.35(g)(4) and (9) provides that where the rules currently require EPPs to provide four or five in-person formal observations, EPPs could conduct two of those formal observations virtually. The adopted amendment does not increase the total number of required formal observations. The adopted amendment to §228.35(g)(4) and (9) aligns SBEC rules with SB 1590 while still requiring EPPs to provide first-year teacher candidates in the classroom with five formal observations to support them in their teaching positions. The table below reflects the implications of the adopted rule for EPPs conducting formal observations.

Figure: 19 TAC Chapter 228 - Preamble

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 31, 2021, and ended January 31, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 11, 2022 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: One individual commented in support of the proposed rule change. The commenter stated that the SBEC should also consider offering clinical and professional experience credit to non-service members.

Response: The SBEC agrees. The Texas Education Agency (TEA) staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: Texas State Teachers Association (TSTA) commented against the proposed rule changes, stating that a virtual observation setting cannot match the rigor of in-person instruction or observation. TSTA stated that in addition to proposed amendments, TSTA believes that each formal virtual observation should also be followed by a post-observation conference within 48 hours of the educational activity and should require submission of student work artifacts to be a component of the post-observation conversation.

Response: The SBEC disagrees. The SBEC's Educator Preparation Advisory Committee (EPAC) received input from committee members on recommendations to the SBEC related to implementation of Senate Bill (SB) 1590, 87th Texas Legislature Regular Session, 2021. The rule text implements the requirements of SB 1590 and incorporates feedback from members of the EPAC to align the rigor of virtual observations with the rigor of in-person observations, including conducting the observation through unedited electronic transmission and the post-observation conference within 72 hours of the observation. The rule aligns requirements for virtual observations with legislative intent and best practice without implementing requirements that are overly burdensome or unnecessary.

Comment: One individual commented neither in support nor against the proposed rule change. The commenter stated that the high school academic day is too long, citing adult professional development, which the individual indicated is usually 50 minutes in length, and other countries that have shorter school days. The commenter stated that the school day should start at 8:20 a.m. and end at 2:30 p.m. The commenter stated that the education system should consider the fundamentals of human growth and development.

Response: The SBEC disagrees. The comment is outside the authority of the SBEC and the scope of the proposed rulemaking.

Comment: One individual commented neither in support nor against the proposed rule change. The commenter stated that 19 TAC Chapter 230, Subchapter B, would help educators use a one-year teacher certificate while working towards a standard teacher certificate to address teacher shortages. The commenter stated that the official language of her country, the Philippines, is English and that her graduation from a university affiliated with the United States and work experience should demonstrate her English proficiency to teach in Texas.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking. The SBEC took action in December 2021 to amend 19 TAC Chapter 230, Subchapter B, to update the list of countries that permit individuals who have obtained the equivalent of a United States bachelor's or master's degree to be exempt from the Test of English as a Foreign Language internet-based exam to demonstrate English language proficiency. The public comment period for that proposal was October 22, 2021 through November 22, 2021.

The State Board of Education (SBOE) took no action on the review of amendments to §230.111 and §230.113 at the April 8, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.044, as amended by HB 159 and SB 226, 87th

Texas Legislature, Regular Session, 2021, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0442(c), which requires the SBEC to ensure that an EPP requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to establish rules for the approval and renewal of EPPs, including requiring programs to incorporate proactive instructional planning techniques in their coursework, and to integrate inclusive practices, evidence-based instruction and intervention strategies throughout course work, clinical experience, and student teaching; TEC, §21.045(a), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to establish standards to govern the approval and continuing accountability of all educator preparation programs; TEC, §21.0453, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the TEA in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.048(a), which states the SBEC shall propose rules prescribing the comprehensive examinations for each class of certificate issued by the board; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which board rules require a bachelor's degree must possess a bachelor's degree with an academic major that is related to the curriculum as prescribed under Subchapter A, Chapter 28; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching

certificate; TEC, §21.051, as amended by HB 159 and SB 1590, 87th Texas Legislature, Regular Session, 2021, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities involving a diverse student population under supervision, and gives SBEC rule-making authority to propose rules providing flexible options for field-based experiences or internships required for certification that involve interaction with a diverse student population and options for candidate observations; Texas Occupations Code (TOC), §55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; and TOC, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.031; 21.041(b)(1) and (2); 21.044, as amended by HB 159 and SB 226, 87th Texas Legislature, Regular Session, 2021; 21.0442(c); 21.0443, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; 21.045(a), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; 21.0453, as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; 21.0454; 21.0455; 21.046(b), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; 21.048(a); 21.0485; 21.0487(c); 21.0489(c); 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 159 and SB 1590, 87th Texas Legislature, Regular Session, 2021; and the Texas Occupations Code (TOC), §55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session; and §55.007.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201594

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: September 1, 2022

Proposal publication date: December 31, 2021

For further information, please call: (512) 475-1497



CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER H. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

19 TAC §230.111, §230.113

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §230.111

and §230.113, concerning professional educator preparation and certification. The amendments are adopted without changes to the proposed text as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9170) and will not be republished. Chapter 230, Subchapter H, serves as a foundation for the practices and procedures related to issuance of Texas certification to individuals licensed in other states. The adopted amendments provide clarification and updates to requirements for individuals licensed in other states to obtain a standard Texas educator certificate.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, outline the process for individuals already certified to teach in other states who are interested in obtaining Texas certification. Following is a description of the adopted amendments.

§230.111. *General Provisions.*

The adopted amendment to §230.111(d) removes the outdated reference to a "certificate entitlement card" because that is not a document that has been presented recently by any individuals certified outside the state who submit applications for the review of their out-of-state credentials.

§230.113. *Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States.*

The adopted amendment to §230.113(b) adds the word "Legacy" to align with the correct title of Chapter 239, Student Services Certificates, Subchapter E, that has been renamed Legacy Master Teacher Certificate, effective December 27, 2020. The title of Chapter 241 is also be updated in subsection (b) to align with the correct title.

The adopted amendment to §230.113(e) clarifies that the current process requires applicants issued the temporary, one-year certificate to obtain a Texas standard classroom teacher certificate prior to adding a supplemental certificate area to their record of certification. This is not a change in the process, only a clarification of current rule and procedures.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 31, 2021, and ended January 31, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 11, 2022 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendments to §230.111 and §230.113 at the April 8, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.040(4), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; TEC, §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an

educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that, when combined with any fees imposed under subsection (d), is adequate to cover the cost of administration of this subchapter; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.052(a), which states that the SBEC may issue a certificate to an educator who submits an application for certification and holds a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board, or a degree issued by an institution located in a foreign country, if the degree is equivalent to a bachelor's degree issued in the United States, or holds an appropriate certificate or other credential issued in another state or country and has met all certification requirements for issuance of the credential; TEC, §21.052(b), which states that for purposes of §21.052(a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired; TEC, §21.052(c), which states that the SBEC may issue a temporary certificate under this section to an educator who holds a degree required by §21.052(a)(1) and a certificate or other credential required by §21.052(a)(2) but who has not satisfied the requirements prescribed by §21.052(a)(3). Subject to subsections (d) and (d-1), the SBEC may specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d), which states that a temporary certificate issued under §21.052(c) to an educator employed by a school district that has constructed or expanded at least one instructional facility as a result of increased student enrollment due to actions taken under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) may not expire before the first anniversary of the date on which the SBEC completes the review of the educator's credentials and informs the educator of the examination or examinations under the TEC, §21.048, on which the educator must perform successfully to receive a standard certificate; and TEC, §21.052(e), which states that an educator who has submitted all documents required by the board for certification and who receives a temporary certificate as provided by subsection (c) has one year to successfully complete examination requirements identified in the review of credentials and specified in Section 21.048, to receive a standard certificate.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.040(4); 21.041(a), (b)(1), (4), and (5), and (c); 21.048; and 21.052(a), (b), (c), (d), and (e).

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201592

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Effective date: May 12, 2022
Proposal publication date: December 31, 2021
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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.7, §232.11

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §232.7 and §232.11, concerning general certification provisions. The amendments are adopted without changes to the proposed text as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9172) and will not be republished. The adopted amendments implement the statutory requirements of Senate Bills (SBs) 199, 1267, and 2066, 87th Texas Legislature, Regular Session, 2021. The adopted amendments require that all educators receive continuing professional education (CPE) training in educating students with disabilities; update the CPE training requirements for classroom teachers, principals, and school counselors; and provide for the SBEC to determine the training guidelines for CPE credit regarding the use of an automated external defibrillator (AED). The adopted amendments also allow for a school district to request a hardship exemption for an educator who has an invalid certificate due to not having the required CPE hours for certificate renewal; require educators to receive dyslexia training for certificate renewal; and add CPE activities to the list of topics that educators can receive for certificate renewal.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, and continuing professional education (CPE).

As a result of the 87th Texas Legislature, Regular Session, 2021, SBs 199, 1267, and 2066 require the SBEC to update rules regarding CPE for educator certificate renewal. In addition to the statutory changes, Texas Education Agency (TEA) staff have received input from stakeholders regarding updating CPE provisions. At the October 1, 2021 SBEC meeting, the SBEC provided input regarding the implementation of the legislation and the stakeholder input, which are reflected in this adoption.

Following is a description of topics for adopted amendments to 19 TAC Chapter 232, Subchapter A, that incorporate the 2021 enabling legislation and SBEC input.

In addition to the following detailed descriptions, the adopted amendments also provide relettering/numbering to conform with the *Texas Register* style and formatting requirements.

§232.7. *Requirements for Certificate Renewal.*

Adopted new §232.7(b)(4) provides for a local school district to apply for a hardship exemption on behalf of an educator who has an invalid certificate due to not earning the required CPE hours for certificate renewal. The exemption will be valid for the academic year in which it is granted with the opportunity for the school district to renew the exemption for one additional year. The adopted amendment requires the application for a hardship exemption to be submitted by the superintendent or designee of the local district and allows for a one-year renewal of the exemption. The exemption allows school districts to hire educators who have left the classroom and who have allowed their CPE to lapse, while upholding the importance of educators obtaining SBEC-required CPE to remain abreast of new developments in teaching methods.

In §232.7, subsection (b) is amended to change the cross reference to paragraphs (1)-(4) and subsection (b)(4) is renumbered to subsection (b)(5) for technical formatting purposes. In addition, technical edits are made in subsection (c)(1) and (7) to apply *Texas Register* style requirements for cross references and acronyms.

§232.11. Number and Content of Required Continuing Professional Education Hours.

Adopted new §232.11(c)(1) implements SB 1267 and reflects SBEC and stakeholder input by requiring all educators to receive CPE training in educating students with disabilities, and the training must include information particular to educating students with dyslexia. This ensures that all educators are prepared to teach any student assigned to their class. Adopted new §232.11(c)(2) maintains the current requirements regarding required CPE content.

Technical edits reorder paragraphs (1) and (2) to subparagraphs (A) and (B).

SB 1267 limits the number of hours in certain specific topics that classroom teachers and principals can obtain in CPE for purposes of certificate renewal. The adopted amendment to §232.11(d)(2) and §232.11(e)(2) provides a transition period, of a certificate renewal date prior to September 1, 2023, for those classroom teachers and principals who have already obtained CPE hours in the topics identified in Texas Education Code (TEC), §21.054, as amended by SB 1267, in excess of the 25% limit introduced by SB 1267. It allows educators who have already obtained in excess of 25% of their hours in these topics in reliance on the law and rules prior to SB 1267 to not lose credit for those hours, while allowing the flexibility in CPE topic areas intended by SB 1267.

Adopted new §232.11(d)(3) and §232.11(e)(3) implements SB 1267 by removing some of the required topics in which classroom teachers and principals must obtain CPE hours and by capping the hours to no more than 25% of the total CPE hours required for certificate renewal for those renewing their certificate on or after September 1, 2023. The adopted new language makes the requirements of the rule parallel the requirements of TEC, §21.054, as amended by SB 1267.

Adopted new §232.11(e)(3)(F)(ii) implements SB 2066 by requiring school principals to receive CPE training in educating emergent bilingual students, which were previously described as "students of limited English proficiency."

SB 1267 also limits the number of hours in all topics currently listed in TEC, §21.054, that counselors can obtain in CPE for purposes of certificate renewal. The adopted amendment to

§232.11(f)(2) allows counselors who have already obtained CPE hours in the topics identified in TEC, §21.054, as amended by SB 1267, in excess of the 25% limit introduced by SB 1267 to use those hours toward the requirements for certificate renewal prior to September 1, 2024. It allows counselors who have already obtained in excess of 25% of their hours in these topics in reliance on the law and rules prior to SB 1267 to not lose credit for those hours, while allowing the flexibility in CPE topic areas intended by SB 1267. The adopted transition date for counselors is September 1, 2024, in contrast to the September 1, 2023 transition date adopted for classroom teachers and principals, because SB 1267 did not strike any of the required topics for counselors, so all of the training that counselors were previously encouraged to get in excess of 25% of their hours will now be capped at 25%.

Adopted new §232.11(f)(3) implements SB 1267 by capping the hours of CPE that counselors can obtain in the required list of topics to no more than 25% of the total CPE hours required for certificate renewal for those renewing their certificate on or after September 1, 2024. The adopted new language makes the requirements of the rule parallel the requirements of TEC, §21.054, as amended by SB 1267. The adopted implementation date of September 1, 2024, allows counselors who have already taken excess hours in the required topics prior to the enactment of SB 1267 to get credit for those hours when renewing their certificates.

The adopted amendment to §232.11(l)(3) implements SB 199 by amending the required AED training for CPE purposes. The adopted amendment removes the requirement that the training be approved under Texas Health and Safety Code, §779.002, as that requirement is no longer in TEC, §21.0541, as amended by SB 199. The adopted amendment provides that the training be in accordance with the guidelines established by the device's manufacturer and approved by the American Heart Association, the American Red Cross, other nationally recognized associations, or the medical director of a local emergency medical services provider. This change will track the requirements of the Texas Department of Health and Human Services for AED training in 25 TAC §157.41(d), Emergency Medical Services and Course Approval, to ensure that educators are trained in safe and effective methods of using the AED.

The adopted new §232.11(l)(5)-(7) provides optional CPE training for educators in the following topics for purposes of certificate renewal: educating students with mental health conditions, including how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma; for classroom teachers, educating emergent bilingual students; and educating students who engage in substance abuse. These are topics that were previously required for CPE under TEC, §21.0541, before it was amended by SB 1267, but are no longer required. The adopted amendment encourages educators to take continuing education in these important topics without requiring them. The adopted amendment thus preserves the discretion for educators in choosing CPE hours, which was the intent of SB 1267 while still reminding educators of the significance of these topic areas.

A technical edit is made to §232.11(l)(3) to remove the acronym "AED" because it is no longer needed.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 31, 2021, and ended January 31, 2022. The SBEC also provided an opportu-

nity for registered oral and written comments on the proposal at the February 11, 2022 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: The Texas Classroom Teachers Association (TCTA), the Texas State Teachers Association (TSTA), and the Texas Counseling Association (TCA) commented in support of the proposed amendments. The commenters noted that the proposed amendments are necessary to implement SB 1267, 87th Texas Legislature, Regular Session, 2021, and to support educators in choosing their CPE topics to hone their craft as professionals. TSTA stated that the proposed amendments also align with the 86th Texas Legislature's Senate Committee on Education Interim Charge and recommendations of the Texas Teacher Workforce Workgroup. TSTA commented in support of the proposed amendments that add CPE training in dyslexia as part of the newly required training in students with disabilities. TCTA commented in support of allowing a hardship extension for educators who have not completed their required CPE hours for certificate renewal. TSTA and TCA commented in support of allowing educators to count training in educating emergent bilingual students and students suffering from grief and trauma for CPE.

Response: The SBEC agrees. Aside from the amendments that are necessary to implement SB 1267, the amendments are the product of SBEC board member and stakeholder input.

Comment: The TCA and an individual commented in support of the proposed amendments that allow school counselors to count their CPE hours that exceed the 25% cap required in SB 1267 toward their continuing education requirements until September 1, 2024, by providing an extension of the implementation date.

Response: The SBEC agrees. The amendments that provide an extension of the implementation of SB 1267 regarding the 25% cap of certain CPE topics allow counselors who have already obtained in excess of 25% of their hours in these topics in reliance of the law and rules prior to SB 1267 to not lose those credit for those hours.

Comment: One individual commented that CPE changes made biennially are difficult for educators to keep up with. The commenter requested that the TEA or SBEC provide a link to free webinars for the mandatory training topics. The commenter also requested that the SBEC allow hours obtained in undergraduate or graduate coursework to count toward CPE requirements.

Response: The SBEC disagrees. The biennial nature of changes to CPE requirements is driven by the Texas Legislature passing bills while in its biennial session to change the statutory requirements for CPE, and the SBEC rules only implement and reflect those statutory changes. The commenter's requests for a link to free webinars and for allowing prior undergraduate credit hours to count toward CPE requirements after certification are outside the scope of the proposed rulemaking.

The State Board of Education (SBOE) took no action on the review of amendments to §232.7 and §232.11 at the April 8, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district

unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code; and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, as amended by SBs 1267 and 2066, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, as amended by SB 199, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an AED; TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; TEC, §22.0831(f)(1) and (2), which state SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements; Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054, as amended by SBs 1267 and 2066, 87th Texas Legislature, Regular Session, 2021; 21.0541, as amended by SB 199, 87th Texas Legislature, Regular Session, 2021; 21.0543; and 22.0831(f); and Texas Occupations Code, §55.002 and §55.003.

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201595



CHAPTER 245. CERTIFICATION OF EDUCATORS FROM OTHER COUNTRIES

19 TAC §§245.1, 245.5, 245.10, 245.15

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§245.1, 245.5, 245.10, and 245.15, concerning certification of educators from other countries. The amendments are adopted without changes to the proposed text as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9178) and will not be republished. The adopted amendments update the requirements for certification of educators from other countries and reflect guidance provided by the SBEC at the July 2021 meeting.

REASONED JUSTIFICATION: The SBEC is statutorily authorized to regulate and oversee all aspects of certification of public school educators. The SBEC is also statutorily authorized to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse population of this state.

At the July 2021 SBEC meeting, the SBEC and Texas Education Agency (TEA) staff discussed the current pathway in which an individual certified in another country must comply to obtain a Texas educator certificate. Following is a description of the adopted amendments that incorporate feedback received by the SBEC during the July 2021 meeting, as well as technical clean-up to update current cross-references.

§245.1. *General Provisions.*

The adopted amendment to §245.1(d) removes the outdated reference to a "certificate entitlement card" as it is not a document that has been presented by individuals certified outside the state who submit applications for the review of out of state credentials. Candidates must submit other documents referenced in rule (statement or approval letter) that are sufficient proof of an individual's completion of requirements for licensure to teach in another state.

§245.5. *Requirements for Issuance of a Texas Certificate Based on Certification from Another Country.*

Adopted new §245.5(a)(3) adds a reference to the provisions in Chapter 152, Commissioner's Rules Concerning Examination Requirements, that may qualify an individual for exemption from required state examinations leading to issuance of the Texas standard certificate.

The adopted amendment to §245.5(b) clarifies that demonstration of English language proficiency is required prior to issuance of a Texas one-year certificate and adds the word "legacy" to align with the correct title to Chapter 239, Student Services Certificates, Subchapter E, that has been renamed, Legacy Master Teacher Certificate, effective December 27, 2020. The title of Chapter 241 is also updated in subsection (b) to align with the correct title.

The adopted amendment to §245.5(e) clarifies that the current process requires applicants issued the temporary, one-year certificate to obtain a Texas standard classroom teacher certificate prior to adding a supplemental certificate area to their record of certification. This is not a change in the certification process, only a clarification of current rule and procedures.

§245.10. *Application Procedures.*

The adopted amendment to §245.10(a) deletes the requirement in paragraph (3) that individuals licensed in other countries must obtain an original written statement, provided by the authorizing licensing agency in the issuing country, that the educator's certificate is in good standing, and has not been revoked, suspended, or sanctioned for misconduct and is not pending disciplinary or adverse action. The adopted amendment reduces duplicative efforts and barriers for educators. The original written statements from foreign licensing agencies have been difficult for some foreign educators to obtain and difficult for TEA staff to verify. With the adopted amendment, educators licensed in other countries will still be required to successfully complete Foreign Credential Evaluation and Texas background check and fingerprinting processes, which are the verifiable safeguards to ensure an educator applying for issuance of a Texas certificate is in good standing. These safeguards are sufficient to ensure that an applicant licensed by another country is qualified to be an educator in Texas.

The adopted amendment in §245.10(a) provides technical edits to renumber paragraphs (4)-(6) to paragraphs (3)-(5).

§245.15. *Evaluation of College Credentials.*

The adopted amendment adds the phrase "Requests for" to the title of §245.15, which is the section that covers all requests to have college credentials reviewed by TEA staff, to match the title of §230.115, Requests for Evaluation of College Credentials, which is the rule specific to individuals certified in other states or territories of the United States. The adopted amendment also establishes the acronym "EPP" to align with *Texas Register* style requirements.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 31, 2021, and ended January 31, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 11, 2022 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendments to §§245.1, 245.5, 245.10 and 245.15 at the April 8, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(b)(1), which states the SBEC must propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which states the SBEC must propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(5), which states the SBEC must propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board

that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.052(a), which states that the SBEC may issue a certificate to an educator who submits an application for certification and holds a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board, or a degree issued by an institution located in a foreign country, if the degree is equivalent to a bachelor's degree issued in the United States, or holds an appropriate certificate or other credential issued in another state or country and has met all certification requirements for issuance of the credential; TEC, §21.052(b), which states that for purposes of §21.052(a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired; TEC, §21.052(c), which states that the SBEC may issue a temporary certificate under this section to an educator who holds a degree required by §21.052(a)(1) and a certificate or other credential required by §21.052(a)(2) but who has not satisfied the requirements prescribed by §21.052(a)(3). Subject to subsections (d) and (d-1), the SBEC may specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d), which states that a temporary certificate issued under §21.052(c) to an educator employed by a school district that has constructed or expanded at least one instructional facility as a result of increased student enrollment due to actions taken under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) may not expire before the first anniversary of the date on which the SBEC completes the review of the educator's credentials and informs the educator of the examination or examinations under the TEC, §21.048, on which the educator must perform successfully to receive a standard certificate; and TEC, §21.052(e), which states that an educator who has submitted all documents required by the board for certification and who receives a temporary certificate as provided by subsection (c) has one year to successfully complete examination requirements identified in the review of credentials and specified in Section 21.048, to receive a standard certificate.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code (TEC), §§21.041(b)(1), (4), and (5); 21.048; and 21.052(a), (b), (c), (d), and (e).

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

Filed with the Office of the Secretary of State on April 22, 2022.

TRD-202201591

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: May 12, 2022

Proposal publication date: December 31, 2021

For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Commissioner of Insurance adopts amendments to 28 TAC Chapter 3, concerning life, accident, and health insurance and annuities. Sections 3.2 - 3.4, 3.6, 3.7, 3.104, 3.105, 3.107, 3.108, 3.114, 3.115, 3.124, 3.127, 3.203 - 3.205, 3.301, 3.302, 3.308, 3.310, 3.311, 3.408, 3.601, 3.702, 3.704, 3.802 - 3.806, 3.811, 3.909, 3.1001, 3.1002, and 3.1006, 3.1101, 3.1303 - 3.1305, 3.1403, 3.1404, 3.1601, 3.1602, 3.1605, 3.1607, 3.1720, 3.1740, 3.1742, 3.1760, 3.3001, 3.3009, 3.3010, 3.3038, 3.3039, 3.3052, 3.3057, 3.3070, 3.3092, 3.3100, 3.3101, 3.3110, 3.3321, 3.3401 - 3.3403, 3.3829, 3.3832, 3.3837, 3.3842, 3.3849, 3.3871, 3.3873, 3.3874, 3.4001, 3.4002, 3.4004, 3.4005, 3.4101 - 3.4103, 3.4105, 3.4317, 3.4503, 3.4506, 3.5103, 3.5302, 3.5602, 3.5610, 3.9101, 3.9103, 3.9104, 3.9106, 3.9202, 3.9203, 3.9206, 3.9211, 3.9212, 3.9401, 3.9403 and 3.9503 are adopted without changes to the proposed text published in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7496). These rules will not be republished.

Section 3.5002 and §3.1606 are adopted with nonsubstantive changes to the proposed text. The Texas Department of Insurance (TDI) revised §3.5002 to correct internal references to other rule sections by replacing "subchapter" with "title" in §3.5002(9) and §3.5002(17) and by adding a missing end parenthesis in §3.5002(7)(E). TDI revised §3.1606 by changing the words "apply" to "applies" and "remain" to "remains." These rules will be republished.

REASONED JUSTIFICATION. The amendments update numerous sections throughout Chapter 3 to reflect Insurance Code §1105.0015 and §425.073, relating to the valuation manual and the operative date of that manual. The amendments also correct and update obsolete and incorrect text throughout Chapter 3. Amendments include updates to (1) statutory references to reflect Insurance Code recodification; (2) use the current names of state agencies; (3) specify current mailing and website addresses; and (4) correct punctuational, grammatical, and typographical errors and revise punctuation and capitalization as appropriate for agency style.

Amendments to multiple sections include the deletion of "shall" or replacement of "shall" with "will" (or another context-appropriate word). The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website, which provides links to resources on writing in plain language. Resources TDI uses for plain language guidance include plainlanguage.gov, which provides federal plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

The adopted sections also replace "subchapter" or "chapter" with "title" where necessary, and remove "the" in front of and commas following "Insurance Code" where appropriate. The adopted sections also replace gendered references to the Commissioner with the phrase "the commissioner."

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments.

**SUBCHAPTER A. SUBMISSION
REQUIREMENTS FOR FILINGS AND
DEPARTMENTAL ACTIONS RELATED TO
SUCH FILINGS**

28 TAC §§3.2 - 3.4, 3.6, 3.7

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter A under Insurance Code §§1153.005, 1251.008, 1273.005, 1701.060, and 36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §1251.008 states that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1273.005 specifies that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201525

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**SUBCHAPTER B. INDIVIDUAL LIFE
INSURANCE POLICY FORM CHECKLIST AND
AFFIRMATIVE REQUIREMENTS**

**28 TAC §§3.104, 3.105, 3.107, 3.108, 3.114, 3.115, 3.124,
3.127**

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter B under Insurance Code §§1153.005, 1251.008, 1273.005, 1701.060, and 36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §1251.008 states that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1273.005 specifies that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201526

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**SUBCHAPTER C. APPROVAL, DISAP-
PROVAL, AND WITHDRAWAL OF APPROVAL
OF CERTAIN PARTICIPATING POLICY FORMS**

28 TAC §§3.203 - 3.205

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter C under Insurance Code §§541.401, 1701.060, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce reasonable rules to accomplish the purposes of Chapter 541, relating to deceptive, unfair, and prohibited practices.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201527

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**SUBCHAPTER D. INDETERMINATE
PREMIUM REDUCTION POLICIES**

28 TAC §§3.301, 3.302, 3.308, 3.310, 3.311

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter D under Insurance Code §§543.001, 1701.060, and 36.001.

Insurance Code §543.001 provides that the Commissioner may adopt and enforce reasonable rules as provided by Chapter 541, Subchapter I, relating to rulemaking, to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201528

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER E. GROUP LIFE, AND/OR GROUP ACCIDENT AND HEALTH INSURANCE POLICIES AND CERTIFICATES

28 TAC §3.408

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter E under Insurance Code §§1204.154, 1701.060, and 36.001.

Insurance Code §1204.154 provides that the Commissioner adopt uniform policy provisions, riders, and endorsements for the policy requirement of Insurance Code §1204.153, relating to payments to the Health and Human Services Commission for certain children.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201529

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER G. PLAIN LANGUAGE REQUIREMENTS FOR HEALTH BENEFIT POLICIES

28 TAC §3.601

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter G under Insurance Code §§1501.010, 1501.260, and 36.001.

Insurance Code §1501.010 requires that the Commissioner adopt rules necessary to implement Chapter 1501 and meet the minimum requirements of federal law, including regulations.

Insurance Code §1501.260 requires that health benefit plan issuers use policies and certificates that are written in plain language. Section 1501.260(e) states that a policy or certificate is written in plain language if it achieves the minimum score established by the Commissioner on the Flesch Reading Ease test or an equivalent test selected by the Commissioner.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201530

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER H. VARIABLE ANNUITIES

28 TAC §3.702, §3.704

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter H under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 specifies that the Commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201531

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER I. VARIABLE LIFE INSURANCE

28 TAC §§3.802 - 3.806, 3.811

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter I under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 specifies that the Commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201532

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER J. REQUIRED REINSTATEMENT RELATING TO MENTAL INCAPACITY OF THE INSURED FOR INDIVIDUAL LIFE POLICIES WITHOUT NONFORFEITURE BENEFITS

28 TAC §3.909

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter J under Insurance Code §1106.010 and §36.001.

Insurance Code §1106.010 provides that the Commissioner adopt reasonable rules to implement Chapter 1106.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201533

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER K. MAXIMUM GUARANTEED INTEREST RATES FOR ANNUITIES, PURE ENDOWMENT CONTRACTS, AND MISCELLANEOUS FUNDS

28 TAC §§3.1001, 3.1002, 3.1006

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter K under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 specifies that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201545

James Person

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Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER L. STRENGTHENED RESERVES PURSUANT TO INSURANCE CODE §425.067

28 TAC §3.1101

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter L under Insurance Code §425.067 and §36.001.

Insurance Code §425.067 authorizes the Commissioner to establish categories of necessary reserves for certain policies, contracts, or benefits issued by life insurance companies.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201534

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER N. NONFORFEITURE STANDARDS FOR INDIVIDUAL LIFE INSURANCE IN EMPLOYER PENSION PLANS

28 TAC §§3.1303 - 3.1305

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter N under Insurance Code §§425.073, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §541.057 prohibits unfair discrimination in the rates charged, dividends or benefits payable, or any other contract terms and conditions for individuals of the same class and equal life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Chapter 541.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201535

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER O. SMOKER-NONSMOKER COMPOSITE MORTALITY TABLES

28 TAC §3.1403, §3.1404

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter O under Insurance Code §§541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §541.057 prohibits unfair discrimination in the rates charged, dividends or benefits payable, or any other contract terms and conditions for individuals of the same class and equal life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Chapter 541.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201536

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER Q. ACTUARIAL OPINION AND MEMORANDUM REGULATION

28 TAC §§3.1601, 3.1602, 3.1605 - 3.1607

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter Q under Insurance Code §§425.054, 425.073, and 36.001.

Insurance Code §425.054 provides that the Commissioner specify by rule the requirements of an actuarial opinion under §425.054(b), including any matters considered necessary to the opinion's scope.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

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

§3.1606. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis.

(a) General description. The statement of actuarial opinion required by this section must consist of the following paragraphs:

(1) a paragraph identifying the appointed actuary and his or her qualifications, recommended language is provided in subsection (b)(1) of this section;

(2) a scope paragraph (recommended language is provided in subsection (b)(2) of this section) identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) a reliance paragraph (recommended language is provided in subsection (b)(3) of this section) describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures, or assumptions (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios), supported by a statement of each such expert with the information prescribed by subsection (e) of this section; and

(4) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities (recommended language is provided in subsection (b)(6) of this section).

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(A) if the appointed actuary considers it necessary to state a qualification of his or her opinion;

(B) if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(C) if the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release; or

(D) if the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(b) Recommended language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. The language is that which should be included in typical circumstances in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. Regardless of the language used, the opinion must retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(A) For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:
Figure: 28 TAC §3.1606(b)(1)(A) (No change.)

(B) For a consulting actuary, the opening paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(1)(B) (No change.)

(2) The scope paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(2) (No change.)

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(3) (No change.)

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(4) (No change.)

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(5) (No change.)

(6) The opinion paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(6) (No change.)

(c) Assumptions for new issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

(d) Adverse opinions. If the appointed actuary is unable to form an opinion, then he or she must refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she must issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies must provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. This certification must include the signature, title, company, address, email address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

(f) Alternate option.

(1) Insurance Code Chapter 425, Subchapter B, gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subsection (b)(6) of this section, the commissioner may make one or more of the following additional approaches available to the opining actuary:

(A) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the commissioner

chooses to allow this alternative, a formal written list of standards and conditions must be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year apply to statements for that calendar year and remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met." If the commissioner chooses to allow this alternative, a formal written statement of such allowance must be issued no later than March 31 of the year it is first effective. It will remain valid until rescinded or modified by the commissioner. The rescission or modifications must be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company must file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request will be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(C) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have submitted the required comparison as specified by this state."

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in Figure: 28 TAC §3.1606(f)(1)(C)(ii)) for which the required comparison must be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year applies to statements for that calendar year and remains in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary must provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual). Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided must be at least: Figure: 28 TAC §3.1606(f)(1)(C)(ii) (No change.)

(iii) The information listed must include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary must provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(2) The commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract with an independent actuary at the company's expense to prepare and file the opinion.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201537

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER R. LIFE SETTLEMENT DIVISION 2. LICENSE APPLICATION AND RENEWAL; COURSE AND TRAINING REQUIREMENTS; MAINTENANCE OF RECORDS

28 TAC §3.1720

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter R, Division 2, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201538

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



DIVISION 3. FORM FILING AND USAGE REQUIREMENTS

28 TAC §3.1740, §3.1742

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter R, Division 3, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201539

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



DIVISION 4. ANNUAL REPORTING

28 TAC §3.1760

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter R, Division 4, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A and regulate the activities and relationships of providers, brokers, insurers, and their authorized representatives.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201540

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

28 TAC §§3.3001, 3.3009, 3.3010, 3.3038, 3.3039, 3.3052, 3.3057, 3.3070, 3.3092, 3.3100, 3.3101, 3.3110

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter S under Insurance Code §§1201.006, 1202.051, and 36.001.

Insurance Code §1201.006 authorizes the Commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201.

Insurance Code §1202.051 provides that the Commissioner adopt rules necessary to implement §1202.051 and meet the minimum requirements of federal law, including regulations.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201541

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §3.3321

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter T under Insurance Code §1652.005 and §36.001.

Insurance Code §1652.005 provides that the Commissioner adopt rules necessary and proper to carry out Chapter 1652.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201542

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER U. NEWBORN CHILDREN COVERAGE

28 TAC §§3.3401 - 3.3403

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter U under Insurance Code §1367.055 and §36.001.

Insurance Code §1367.055 provides that the Commissioner may adopt rules necessary to implement Chapter 1367, Subchapter B.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201543

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**SUBCHAPTER Y. STANDARDS FOR
LONG-TERM CARE INSURANCE,
NON-PARTNERSHIP AND PARTNERSHIP
LONG-TERM CARE INSURANCE COVERAGE
UNDER INDIVIDUAL AND GROUP POLICIES
AND ANNUITY CONTRACTS, AND LIFE
INSURANCE POLICIES THAT PROVIDE
LONG-TERM CARE BENEFITS WITHIN THE
POLICY**

**DIVISION 2. NON-PARTNERSHIP AND
PARTNERSHIP LONG-TERM CARE
INSURANCE**

28 TAC §§3.3829, 3.3832, 3.3837, 3.3842, 3.3849

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter Y, Division 2, under Insurance Code §§1651.004, 1651.107, and 36.001.

Insurance Code §1651.004 authorizes TDI to adopt reasonable rules necessary and proper to carry out Chapter 1651.

Insurance Code §1651.107 provides that the Commissioner may adopt rules as necessary to implement Chapter 1651, Subchapter C.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201544

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**DIVISION 4. PARTNERSHIP LONG-TERM
CARE INSURANCE ONLY**

28 TAC §§3.3871, 3.3873, 3.3874

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter Y, Division 4, under Insurance Code §§1651.004, 1651.107, and 36.001.

Insurance Code §1651.004 authorizes TDI to adopt reasonable rules necessary and proper to carry out Chapter 1651.

Insurance Code §1651.107 authorizes the Commissioner to adopt rules as necessary to implement Chapter 1651, Subchapter C.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201546

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



**SUBCHAPTER Z. EXEMPTION FROM
REVIEW AND APPROVAL OF CERTAIN LIFE,
ACCIDENT, HEALTH AND ANNUITY FORMS
AND EXPEDITION OF REVIEW**

28 TAC §§3.4001, 3.4002, 3.4004, 3.4005

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter Z under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201547

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER AA. LIMITED EXEMPTION FOR INSURANCE COVERAGE FROM THE REQUIREMENTS OF INSURANCE CODE CHAPTER 1701

28 TAC §§3.4101 - 3.4103, 3.4105

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter AA under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201548

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER CC. STANDARDS FOR ACCELERATION-OF-LIFE-INSURANCE BENEFITS FOR INDIVIDUAL AND GROUP POLICIES AND RIDERS

28 TAC §3.4317

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter CC under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the Commissioner may adopt rules to implement Chapter 1111, Subchapter B.

Insurance Code §1701.060 provides that the Commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201549

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER EE. VALUATION OF LIFE INSURANCE POLICIES

28 TAC §§3.4503, §3.4506

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter EE under Insurance Code §§425.058(c)(3), 425.073, and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201550

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE
DIVISION 1. GENERAL PROVISIONS

28 TAC §3.5002

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter FF, Division 1, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

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

§3.5002. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) **Account**--The aggregate credit life insurance or credit accident and health coverage for a single class of business written through a single creditor, or written through more than one creditor under common control or ownership, by the insurer, whether coverage is written on a group or individual policy basis.

(2) **Actual earned premium**--The total of all premiums earned at the premium rates actually charged and in force during the experience period.

(3) **Approved deviation by case**--A premium rate or premium rate schedule adjusted in accordance with the deviation procedures set out in Division 6 of this subchapter (relating to Deviation Procedures).

(4) **Automatic deviation**--A premium rate that is filed pursuant to Insurance Code §1153.105.

(5) **Average number of life years**--The average of the number of group certificates or individual policies in force each month during the experience period (without regard to multiple coverage) times the number of years in the experience period.

(6) **Case**--Either a "single account case" or a "multiple account case" as follows:

(A) **Single account case**--An account that is at least 25% credible or, at the option of the insurer, any higher percentage as determined by the credibility table set out in §3.5603 of this title (relating to Credibility Table). An insurer exercising this option must in writing notify, and obtain written approval of the commissioner, of the credibility factor it will use to define a "single account case." Once the commissioner is so notified, the credibility factor will remain in effect for the insurer until a different election has been filed in writing by the insurer and approved by the commissioner.

(B) **Multiple account case**--A combination of all the insurer's accounts of the same class of business with experience in this state, excluding all single account cases of the insurer defined in subparagraph (A) of this paragraph, or with the approval of the commissioner; "multiple account case" also means two or more accounts of the insurer, having like underwriting characteristics which are combined by the insurer for premium rating purposes, excluding all "single account cases" as defined in subparagraph (A) of this paragraph and other "multiple account cases" defined previously.

(7) **Class of business**--A class of business listed as follows:

(A) **Class A**--Commercial banks, savings and loan associations and mortgage companies;

(B) **Class B**--Finance companies and small loan companies;

(C) **Class C**--Credit unions;

(D) **Class D**--Production credit associations (agriculture and horticulture P.C.A.s);

(E) **Class E**--Dealers (including auto and truck, other dealers, and retail stores); and

(F) **Class F**--Other than subparagraphs (A) - (E) of this paragraph.

(8) **Closed-end transactions**--Credit transactions other than "open-end transactions" as defined in this section.

(9) **Credibility factor**--The degree to which the past experience of a case can be expected to occur in the future. The credibility factor is based either on the average number of life years or the incurred claim count during the experience period as shown in the credibility table set out in §3.5603 of this title. The insurer must notify the commissioner in writing, and obtain written approval of the commissioner, about which of the two methods it will use in measuring credibility. Once the commissioner is so notified, the method will remain in effect for the insurer until a change has been filed with and approved by the commissioner.

(10) **Credit disability**--Credit Accident and Health.

(11) **Earned premium at presumptive premium rate**--Premium earned during the experience period at the presumptive premium rate set forth in §3.5206 of this title (relating to Presumptive Premium Rates). If the rate for a case is not the presumptive premium rate, premium earned at the presumptive premium rate must be determined in accordance with the conversion method set forth in Form CI-EP-L or Form CI-EP-DIS, as appropriate, provided by the department for that purpose, and set out in an attachment by the insurer to its deviation request form. The forms can be obtained from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030. The forms can also be obtained from the department's internet website at www.tdi.texas.gov/forms.

(12) **Experience**--The earned premiums and incurred claims for a single or multiple account case. Experience will be the most recent experience in this state for a class of business, and may include the experience of the case while with a prior insurer to the extent necessary to achieve credibility.

(13) **Experience period**--The period of time for which experience is reported, but not for period longer than three years.

(14) **Incurred claim count**--The number of claims incurred for the case during the experience period. This means the total number of claims reported during the experience period (whether paid or in the process of payment) plus any incurred but not reported at the end of the experience period less the number of claims incurred but not reported at the beginning of the experience period. If a debtor has been issued more than one certificate for the same plan of insurance, only one claim is counted. If a debtor receives disability benefits, only the initial claim payment for that period of disability is counted.

(15) **Incurred claims**--The liability resulting from the happening of the contingency insured against whether paid, reported, not reported or resisted on accounting dates, valued by date of occurrence and, without reduction for reinsurance, at amounts, excluding claims expenses, sufficient to discharge the company from all liability and is equal to claims paid minus unreported claims beginning of period plus

unreported claims end of period minus claim reserve beginning of period plus claim reserve end of period.

(16) Open-end transactions or revolving accounts--Transactions in which credit is extended by a creditor under an agreement whereby:

(A) the creditor reasonably contemplates repeated transactions;

(B) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(C) the amount of credit that may be extended to the debtor during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(17) Presumptive premium rate--The rate established by the commissioner and set out in §3.5206 of this title.

(18) Pro rata method--A method used in determining premium refunds based on the assumption that premiums are earned in equal increments over the term of the policy. The premium refunds are calculated by multiplying the original gross premium by a factor determined by the formula t/n , in which t is the number of months remaining from its evaluation date to the end of the loan and n is the number of months in the original term.

(19) Rule of anticipation (aka the single premium method)--A method used in determining premium refunds in which the unearned premium is equal to the gross single premium for the remaining term and remaining benefits.

(20) Sum of the digits method, aka rule of 78 method--A method used in determining premium refunds in which an unearned premium factor is calculated by dividing the sum of the original number of monthly payments by the sum of the remaining number of monthly payments. The premium refunds are calculated by multiplying the original gross premium by a factor determined by the formula $(t * (t+1))/(n * (n+1))$, in which t is the number of months remaining from its evaluation date to the end of the loan and n is the number of months in the original term.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201551

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



DIVISION 2. APPLICATIONS AND POLICIES

28 TAC §3.5103

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter FF, Division 2, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201552

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



DIVISION 4. PRESUMPTIVELY ACCEPTABLE RELATION OF CREDIT LIFE INSURANCE BENEFITS TO PREMIUMS

28 TAC §3.5302

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter FF, Divisions 4, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201553

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



DIVISION 6. DEVIATION PROCEDURES

28 TAC §3.5602, §3.5610

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter FF, Division 6, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201554

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER JJ. 2001 CSO MORTALITY TABLE

28 TAC §§3.9101, 3.9103, 3.9104, 3.9106

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter JJ under Insurance Code §§425.058(c)(3), 425.073, 1105.055(h), and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201555

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER KK. EXCLUSIVE PROVIDER BENEFIT PLAN

28 TAC §§3.9202, 3.9203, 3.9206, 3.9211, 3.9212

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter KK under Insurance Code §845.004 and §36.001, Government Code §533.0025, and Health and Safety Code §62.051.

Insurance Code §845.004 provides that the Commissioner must adopt rules as necessary to implement the Statewide Rural Health Care System Act.

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

Government Code §533.0025 provides that the Medicaid-managed care delivery system must use the most cost-effective cost model, as determined by the Health and Human Services Commission.

Health and Safety Code §62.051 provides that the Commissioner of the Health and Human Services Commission may delegate to TDI the authority to adopt, with the approval of the commission, any rules necessary to implement the Children's Health Insurance Program.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201556

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER MM. PREFERRED MORTALITY TABLES

28 TAC §§3.9401, §3.9403

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter MM under Insurance Code §§425.058(c)(3), 425.073, 1105.055(h), and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201557

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

28 TAC §3.9503

STATUTORY AUTHORITY. The Commissioner adopts amendments to Subchapter NN under Insurance Code §§1114.006, 1114.007, and 36.001.

Insurance Code §1114.006 provides that the Commissioner by rule adopt or approve model documents to be used for consumer notices under Chapter 1114.

Insurance Code §1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Insurance Code, Chapter 36, Subchapter A, to accomplish and enforce the purpose of Chapter 1114.

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

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

Filed with the Office of the Secretary of State on April 21, 2022.

TRD-202201558

James Person

General Counsel

Texas Department of Insurance

Effective date: May 11, 2022

Proposal publication date: November 5, 2021

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER O. COASTAL MANAGEMENT AREAS

31 TAC §57.1011, §57.1012

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 27, 2022, adopted amendments to 31 TAC §57.1011 and §57.1012, concerning Coastal Management Areas, with changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8987). No changes were made in §57.1011. It will not be republished. In §57.1012(n)(4)(A) an improper citation was corrected, and in §57.1012(n)(4)(B) a term was standardized in reference to the executive director. Section 57.1012 will be republished. The amendments comport department rules governing the possession and display of handguns on coastal management areas (CMAs) operated by the department with the provisions of legislation enacted in the most recent general session of the Texas Legislature.

Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited. Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The amendment to §57.1011, concerning Definitions, adds a reference to the Penal Code definition of firearms for clarity.

The amendment to §57.1012, concerning Rules of Conduct, creates an exception to the current rule regarding display of handguns to allow persons to possess a handgun in compliance with applicable law, including, but not limited to, applicable regulations adopted pursuant to Government Code, Chapter 411, Subchapter H and Penal Code, Chapter 46.

The department received four comments opposing adoption of the rules as proposed. Of the four comments opposing adoption, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that a permit should be required to possess a handgun. The department disagrees with the comment and responds that statutory law provides for the possession of a handgun by a person without a permit and the commission does not have the authority to modify or eliminate the provisions of that statute. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal is confusing and the public cannot determine what the legal requirements are for weapons possessed on department lands. The department disagrees with the comment and responds that the wording of the rules is necessary to ensure their legal validity. The department strongly recommends that any person uncertain as to the rules concerning firearms on department properties contact the department prior to visitation in order to ensure that any prospective conduct is lawful. No changes were made as a result of the comment.

The department received nine comments supporting adoption of the rules as proposed.

The amendments are adopted under Parks and Wildlife Code, §81.006, which allows the department to authorize access to

wildlife management areas (which includes coastal management areas) and §81.405, which provides the commission with authority to adopt rules governing recreational activities in wildlife management areas, including coastal management areas.

The rule as adopted affects Parks and Wildlife Code, Chapter 81 §57.1012. *Rules of Conduct.*

(a) General.

(1) This section applies to all CMAs unless an exception for a specific area and time period is designated by the executive director or by written permission of the department.

(2) The provisions of this section do not apply to persons authorized by the department to conduct research on the area and department employees in performance of their duties.

(3) It is an offense for any person to fail to obey regulations posted at the area or policies established by order of the executive director, fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties.

(b) Abandoned and unattended property. It is an offense for any person to:

(1) abandon a vehicle or other personal property;

(2) leave a vehicle, boat, barge, or other property unattended in such a manner as to create a hazardous or unsafe condition; or

(3) leave property unattended for longer than 24 consecutive hours.

(c) Alcoholic beverages. It is an offense for any person to publicly consume or display an alcoholic beverage.

(d) Animals and pets. It is an offense for any person to:

(1) possess dogs in camp that are not confined or leashed; or

(2) allow vicious or dangerous dogs to create a disturbance or hazard.

(e) Arms and Firearms. It is an offense for any person to display or discharge an arm or firearm, except while:

(1) hunting migratory game birds under the provisions of this subchapter;

(2) fishing by means of lawful archery equipment; or

(3) the person is licensed to possess and carry a handgun under Government Code, Chapter 411, Subchapter H, and is in possession of and carrying the handgun in compliance with applicable law, including, but not limited to, applicable regulations adopted pursuant to Government Code, Chapter 411, Subchapter H; or

(4) the person carries a handgun in a holster in compliance with Penal Code, Chapter 46.

(f) Camping. It is an offense for any person to:

(1) camp for more than 14 consecutive days on a CMA where overnight camping is allowed, or for more than 21 days in any 30-day period; or

(2) establish a camp and leave it unattended for a period of longer than 24 hours.

(g) Fires. Fires are permitted and visitors may bring firewood or collect deadwood or driftwood for fires; however, it is unlawful for any person to:

(1) fell or cut any living vegetation for firewood; or

(2) leave a fire unattended.

(h) Fireworks are prohibited.

(i) Fishing. Fishing is allowed under the provisions of Subchapter N of this chapter (relating to Statewide Recreational and Commercial Fishing Proclamation).

(j) Graffiti and Vandalism. It is an offense for any person to write on, scratch, or otherwise deface natural features, signs, buildings, or other structures.

(k) Hunting.

(1) No person may hunt any wildlife resource other than migratory game birds.

(2) The hunting, taking, and possession of migratory game birds shall be as provided by Chapter 65, Subchapter N of this title (relating to Migratory Game Bird Proclamation).

(3) It is an offense for any person to hunt migratory game birds without possessing a valid Annual Public Permit.

(l) Motor Vehicles and Off-Road Vehicles. It is an offense for any person to:

(1) operate a motor vehicle anywhere other than designated roads, parking areas, or other areas designated as open for motor vehicle use; or

(2) operate an off-road vehicle anywhere other than in an area designated as open for off-road vehicle use.

(m) Airboats. The use of airboats is prohibited on CMAs.

(n) Natural and Cultural Resources. This paragraph does not apply to incidental or unintentional disturbance occurring as result of normal visitation activities.

(1) Plant life. It is an offense for any person to willfully mutilate, injure, destroy, pick, cut, remove, or introduce any plant life except by permit issued by the director.

(2) Geological features. It is an offense for any person to intentionally or negligently take, remove, destroy, deface, tamper with, or disturb any rock, earth, soil, gem, mineral, fossil, or other geological deposit except by permit issued by the director.

(3) Cultural resources. It is an offense for any person to take, remove, destroy, deface, tamper with, disturb, or otherwise adversely impact any prehistoric or historic resource, including, but not limited to, buildings, structures, cultural features, rock art, or artifacts, except by written order of the director.

(4) Wildlife. It is an offense for any person to:

(A) harm, harass, disturb, trap, confine, catch, possess, or remove any wildlife, or portions of wildlife, except as provided in subsection (k) of this section or authorized in writing by the department;

(B) release or introduce any species of animal life (including to waters within or bordering a CMA), except as authorized by the Parks and Wildlife Code and written order of the director or designee; or

(C) feed or offer food to any wildlife, or to leave food unsecured in a manner that makes the food available to wildlife, unless specifically authorized by the department.

(o) Wastewater, Sewage, and Garbage. It is an offense for any person to:

(1) deposit waste water, sewage, or effluent from sinks, toilets, or other plumbing fixtures directly on the ground or into the water; or

(2) dispose of garbage except in a receptacle provided for that use or as may otherwise be specifically authorized by department personnel.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201517

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: May 10, 2022

Proposal publication date: December 24, 2021

For further information, please call: (512) 389-4775



CHAPTER 59. PARKS

SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §§59.131, §59.134

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 27, 2022, adopted amendments to 31 TAC §59.131 and §59.134, concerning State Park Operational Rules, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8989). The amendments comport department rules governing the possession and display of handguns by visitors to state parks with the provisions of legislation enacted in the most recent general session of the Texas Legislature. The rules will not be republished.

Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited. Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The amendment to §59.131, concerning Definitions, adds a reference to applicable provisions of the Penal Code to the definition of "arms and firearms" to accommodate the effect of H.B. 1927.

The amendment to §59.134, regarding Rules of Conduct in State Parks, alters current rule to the effect of ensuring that department regulations regarding the possession and display of handguns in state parks do not conflict with the provisions of House Bill 1927. Additionally, the amendment alters current language regarding exceptions to the prohibition of display and use of arms

and firearms to clarify that the exceptions exist only during the authorized activities and not at any other time the person is within the park.

The department received four comments opposing adoption of the rules as proposed. Of the four comments opposing adoption, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that a permit should be required to possess a handgun. The department disagrees with the comment and responds that statutory law provides for the possession of a handgun by a person without a permit and the commission does not have the authority to modify or eliminate the provisions of that statute. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal is confusing and the public cannot determine what the legal requirements are for weapons possessed on department lands. The department disagrees with the comment and responds that the wording of the rules is necessary to ensure their legal validity. The department strongly recommends that any person uncertain as to the rules concerning firearms on department properties contact the department prior to visitation in order to ensure that any prospective conduct is lawful. No changes were made as a result of the comment.

The department received nine comments supporting adoption of the rules as proposed.

The amendments are adopted under Parks and Wildlife Code, §13.101, which provides the commission with authority to promulgate regulations governing abusive, disruptive, or destructive conduct of persons; the activities of park users including camping, swimming, boating, fishing, or other recreational activities; and conduct which endangers the health or safety of park users or their property.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201518

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: May 10, 2022

Proposal publication date: December 24, 2021

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE

SUBCHAPTER H. PUBLIC HUNTING PROCLAMATION

31 TAC §§65.199, 65.201, 65.203

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 27, 2022, adopted amendments to 31 TAC §§65.199, 65.201, and 65.203, concerning the Public Hunting Proclamation, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8991). The rules will not be republished. The

department notes that due to an error on the part of the agency, the introductory line of the proposal preamble as published was not accurate. As published, the proposal preamble indicated amendments to 31 TAC §§65.199, 65.202, and 65.203, which is erroneous. The statement should have indicated amendments to 31 TAC §§65.199, 65.201, and 65.203. The remainder of the submission, including the rule text, was correct. The amendments comport department rules governing the possession and display of handguns on wildlife management areas operated by the department with the provisions of legislation enacted in the most recent general session of the Texas Legislature.

Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited. Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The amendments to §65.199, concerning General Rules of Conduct, §65.201, concerning Motor Vehicles, and §65.203, concerning Hunter Safety, create exceptions to current rules regarding possession of firearms to allow persons to possess a handgun in compliance with applicable law, including, but not limited to, Penal Code, Chapter 46 and Government Code, Chapter 11, Subchapter H. The amendment to §65.203 also make nonsubstantive changes to enhance clarity.

The department received four comments opposing adoption of the rules as proposed. Of the four comments opposing adoption, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that a permit should be required to possess a handgun. The department disagrees with the comment and responds that statutory law provides for the possession of a handgun by a person without a permit and the commission does not have the authority to modify or eliminate the provisions of that statute. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal is confusing and the public cannot determine what the legal requirements are for weapons possessed on department lands. The department disagrees with the comment and responds that the wording of the rules is necessary to ensure their legal validity. The department strongly recommends that any person uncertain as to the rules concerning firearms on department properties contact the department prior to visitation in order to ensure that any prospective conduct is lawful. No changes were made as a result of the comment.

The department received nine comments supporting adoption of the rules as proposed.

The amendments are adopted under Parks and Wildlife Code, §81.403, which allows the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or a wildlife management area and requires the commission to prescribe by rule the conditions for the issuance and use of such permits, and §81.405, which provides the commission with authority to adopt rules governing recreational activities in wildlife management areas.

The rule as adopted affects Parks and Wildlife Code, Chapter 81.

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

Filed with the Office of the Secretary of State on April 20, 2022.

TRD-202201516

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: May 10, 2022

Proposal publication date: December 24, 2021

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 F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

34 TAC §9.1052

The Comptroller of Public Accounts adopts amendments to §9.1052 concerning forms, with changes to the proposed text as published in the November 19, 2021, issue of the *Texas Register* (46 TexReg 7866). The rule will be republished. The comptroller is withdrawing the amendment to §9.1051 regarding the Annual Eligibility Report in response to comments received and will be submitting the withdrawal in a separate submission at the same time this adoption is submitted.

Amended §9.1052 provides a revised online Biennial Progress Report, a revised online Biennial School District Cost Data Request (CDR) and a simplified reporting process via the comptroller's online reporting system.

The comptroller received 349 comments from organizations/interest groups, law firms and individuals including legislators. The New Hope Baptist Church, the Metropolitan Organization, the Texas IAF, Abiding Presence Lutheran Church, Interfaith/Community Action Network (I/CAN), the Network of Texas IAF Organizations, the University Presbyterian Church of San Antonio, COPS/Metro, First Congregational Church of Houston, Francis of Assisi parish, Our Lady of Guadalupe Church of San Antonio COPS/METRO, Central Texas Interfaith, the First Unitarian Universalist Church of San Antonio-COPS/Metro, Texas State Teachers Association, Texas AFT (American Federation of Teachers), Texas AFL-CIO, Coalition of Texans with Disabilities, IDRA (Intercultural Development Research Association), League of Women Voters of Texas, National Association of Social Workers - Texas, Progress Texas, Impact Texas, La Fe Policy Research and Education Center, Every Texan, Sister of Divine Providence based in San Antonio, Texas, St. Timothy Catholic Church of San Antonio-COPS/Metro, Congregational Church of Austin, Ursuline Sister from the Central Province

of the United States, St. Leo the Great Catholic Church in Houston, Dallas Area Interfaith, Macedonia Baptist Church of San Antonio-COPS/Metro, First Congregational Church, Holy Family Parish, Texas Campaign for the Environment/TCE Fund, Christ Redeeming Community Church, Freedom of Information Foundation of Texas, Good Jobs First, Padon Accounting and Project Management Services, Shivers and Shivers, the Center for Economic Accountability and Texas Public Policy Foundation disagreed with adopting the proposed rule amendments. Their comments suggest that the proposed rule amendments concerning the Annual Eligibility Report, the Biennial School District Cost Data Request and the Biennial Progress Report will reduce program transparency and access to information needed for evaluating the program. Additionally, they contend that it's the comptroller's responsibility to collect the reported information for agreement holder accountability and to protect the state's finances.

In the comments, the Texas House Democratic Caucus expressed disapproval of the proposed rule amendments and asserted that transparency is necessary for the legislature to evaluate the program or similar programs. They also stated that the public deserves to know the information as well.

A partner of Moak, Casey & Associates expressed opposition to the amendments that eliminate forms and datasets from forms but supported streamlining electronic submissions.

Texas Taxpayers and Research Association (TTARA) and the Texas Association of Manufacturers (TAM) fully supported the proposed rule amendments. They professed that a condensed web-based Biennial Progress Report would streamline the reporting process, optimize the agency's data analysis/processing and reduce company expenditures on recurring submissions of the same datasets. They also defended eliminating the Biennial School District Cost Data Request for the sake of simplifying the reporting process and emphasized that the Annual Eligibility Report would still be public information subject to open records.

Under the proposed amendments to §9.1051, school districts would no longer be required to forward a copy of the Annual Eligibility Report to the comptroller for purposes of making the report publicly accessible on the comptroller's website. Based on the comments, the comptroller will withdraw the proposed amendments to §9.1051 and will continue to post the Annual Eligibility Report as a substantive document on its website following receipt from the school districts.

Based on the comments, the comptroller agrees to retain the Biennial School District Cost Data Request (CDR) with modifications. While the total tax benefits projected for 10-20 years in the CDR are not reliable, many commenters use the projections as a point of reference for future taxable value and tax rates. The comptroller adopts the Biennial School District Cost Data Request as a single online form containing or requiring the upload of substantially the same data in the three-digit and four-digit Biennial School District Cost Data Requests.

The comptroller agrees in part with the commenters that opposed the changes to the Biennial Progress Report. The comptroller will include questions to the proposed Biennial Progress Report to collect data on the date of commencement of operations, the number of non-qualifying jobs in the reporting year, and the total wages of non-qualifying jobs in the reporting year. The comptroller disagrees with comments that would prevent the removal of several redundant questions that are publicly available in other posted forms such as agreements and applications.

Consequently, the comptroller adopts the Biennial Progress Report with minor non-substantive changes, elimination of redundant questions and with the inclusion of §3, question 3, as well as §5, questions 7 and 8, from the current four-digit form. The adopted questions are available on the comptroller's website at <https://comptroller.texas.gov/economy/local/ch313/forms.php>.

The comptroller agrees with the commenters supporting improvements to the Chapter 313 data collection and reporting system. Staying current with technological advances has an enormous impact on the way programs are administered by the comptroller. To provide the best service, implementing upgrades to the data collection and reporting systems for the Chapter 313 program is essential. These upgrades will improve program compliance and efficiency. The comptroller adopts amendments to §9.1052(b) with changes to collect all reports and online forms via the comptroller's online reporting system.

To allow adequate time for implementation, the comptroller adds January 1, 2023 as the effective date for the adoption of the amendments herein.

The amendments are adopted under Tax Code, §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments implement Tax Code, Chapter 313.

§9.1052. *Forms.*

(a) The comptroller adopts by reference the following forms:

- (1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);
- (2) Annual Eligibility Report (Form 50-772A);
- (3) Job Creation Compliance Report (Form 50-825); and
- (4) Texas Economic Development Act Agreement (Form 50-826).

(b) Agreement holders must complete and submit all reports and online forms including the Biennial Progress Report and the Biennial School District Cost Data Request through the comptroller's online reporting system.

(c) Copies of the forms are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's website, at <https://www.comptroller.texas.gov/economy/local/ch313/forms.php>. Copies may also be requested by calling our toll-free number, (800) 531-5441, extension 34679.

(d) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

(e) The comptroller may periodically update the dates, form version numbers, and/or years in the appropriately marked sections of the forms described in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on April 19, 2022.

TRD-202201481

Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: January 1, 2023
Proposal publication date: November 19, 2021
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