

ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER R. CHILDREN'S ACCESS TO NUTRITIOUS FOOD GRANT PROGRAM

4 TAC §§1.1200 - 1.1204

The Texas Department of Agriculture (Department) adopts the repeal of Texas Administrative Code, Title 4, Chapter 1, Subchapter R, Children's Access to Nutritious Food Grant Program, §§1.1200 - 1.1204. The repeal is adopted without changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7619) and will not be republished.

The Department identified the need for the repeal during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of the November 18, 2022, issue of the *Texas Register* (47 TexReg 7753).

The Department adopts the repeal of Subchapter R based on lack of business necessity due to the absence of appropriated funding. During its review of Subchapter R, the Department determined that funds were not appropriated for the program. At such time as program funding is appropriated, the Department will comply with the requirements contained within Texas Agriculture Code Chapter 25 and re-establish the grant program.

The Department received no comments on the proposed repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

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

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CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code, Subchapter H, Structural Pest Control Service, §§7.114, 7.121 - 7.130, 7.132 - 7.136, 7.141 - 7.152, 7.154, 7.156, 7.161, 7.162, 7.172 - 7.178, 7.191 - 7.193, 7.196, 7.201 - 7.205, and the repeal of §7.163 and §7.195. The amendments and repeals are adopted without changes to the proposed text as published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6340) and will not be republished.

Amendments to §7.115 are adopted with changes to the proposed text as published in the September 30, 2022 issue of the *Texas Register* (47 TexReg 6340) and will be republished. The Department has made non-substantive changes to the Penalty Matrix in §7.115 (Figure: 4 TAC §7.115) from the proposed text to delete duplicative violations. The revision results in no change to the nature or scope of the proposed text of the rule, affects no new individuals, and imposes no additional requirements for compliance.

The Department identified the need for the amendments and repeals during its rule review of Texas Administrative Code, Chapter 7, Subchapter H, conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of the September 30, 2022 issue of the *Texas Register* (47 TexReg 6472).

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

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

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

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

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

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

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

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

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

The amendments to §7.128 make editorial changes.

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

The amendments to §7.130 make editorial changes.

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

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

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

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

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

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

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

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

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

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

The amendments to §7.148 make editorial changes.

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

The amendment to §7.154 updates Department contact information.

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

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

The amendments to §7.162 make editorial changes.

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

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

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

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

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

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

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

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

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

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

The amendments to §7.196 clarify when Structural Pest Control Advisory Committee meetings are held, update quorum require-

ments and the number of Committee members, remove redundant language that appears in §7.192, and correct a reference to Robert's Rules of Order.

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

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

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

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

PUBLIC COMMENTS

During the 30-day public comment period, the Department received comments from the Texas Pest Control Association and a structural pest control licensee.

Comments: Both comments expressed support for the proposed amendments, while commenting that they were neutral on §7.143(d).

Response: The Department appreciates the general support for the amendments, however, as the comments expressed neutrality to a particular subsection, no changes have been made to the proposed text in response to the comments.

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 1. GENERAL PROVISIONS

4 TAC §7.114, §7.115

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

§7.115. Structural Pest Control Enforcement.

The department has established the following schedule of disciplinary sanctions for violations of this subchapter:
Figure: 4 TAC §7.115

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

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DIVISION 2. LICENSES

4 TAC §§7.121 - 7.130, 7.132 - 7.136

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

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

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DIVISION 3. COMPLIANCE AND ENFORCEMENT

4 TAC §§7.141 - 7.152, 7.154, 7.156

The amendments are adopted under Texas Occupations Code, §1951.0021, which allows the Department, through its Structural Pest Control Service, to regulate and license those engaged in the business of structural pest control, noncommercial applicators, and technicians; §1951.206, which allows the Department to adopt rules restricting advertising or competitive bidding to prohibit false, misleading, or deceptive practices by those engaging in structural pest control; §1951.207, which requires the Department to adopt rules related to inspecting and conducting investigations of structural pest control business licensees; §1951.212, which outlines requirements for the Department to inspect school districts; §1951.452, which allows the Department to require licensees to make records of

pesticide use; and §1951.456, which requires the Department to adopt rules related to requirements of licensees and unlicensed persons to post and provide pest control signs and consumer information sheets in residences, workplaces, and other buildings as outlined in §§1951.453-1951.455.

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

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DIVISION 4. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

4 TAC §7.161, §7.162

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

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4 TAC §7.163

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

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DIVISION 5. TREATMENT STANDARDS

4 TAC §§7.172 - 7.178

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

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DIVISION 6. STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

4 TAC §§7.191 - 7.193, 7.196

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

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4 TAC §7.195

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

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DIVISION 7. INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS

4 TAC §§7.201 - 7.205

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

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

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CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER B. NUTRITION WORKING GROUPS

4 TAC §26.21

The Texas Department of Agriculture (the Department) adopts the repeal of Title 4, Part 1, Chapter 26, Subchapter B, §26.21 without changes to the proposed text as published in the November 18, 2022, issue of the *Texas Register* (47 TexReg 7631) and will not be republished.

The repeal is the result of a review of the subchapter pursuant to the four-year rule review prescribed by Texas Government Code §2001.039. The repeal of §26.21 is adopted because it is duplicative of Texas Agriculture Code §12.0026.

The Department received no comments regarding the proposed repeal.

The repeal is adopted under Texas Agriculture Code §12.016, which provides authority for the Department to adopt rules to administer its duties under the Texas Agriculture Code.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) adopts amendments to §89.1080 and §89.1195, concerning special education services. The amendment to §89.1080 is adopted without changes to the proposed text as published in the September 23, 2022 issue of the *Texas Register* (47 TexReg 6076) and will not be republished. The amendment to §89.1195 is adopted with changes to the proposed text as published in the September 23, 2022 issue of the *Texas Register* (47 TexReg 6076) and will be republished. The adopted amendments to §89.1080 and §89.1195 provide updates and clarifications regarding special education complaints.

REASONED JUSTIFICATION: The rules in Chapter 89, Subchapter AA, address provisions for special education services, including general provisions and clarification of federal regulations and state law. The adopted amendments update the rules as follows.

Division 2. Clarification of Provisions in Federal Regulations and State Law

The adopted amendment to §89.1080, Regional Day School Program for the Deaf, replaces "hearing impairment" with "deaf or hard of hearing." Additional technical edits were also made.

Division 7. Dispute Resolution

TEA proposed an amendment to §89.1185, Hearing Procedures, which would have clarified that summary proceedings in a special education due process hearing may be used only when both parties in the hearing agree to use the summary process. However, based on public comment, TEA has determined to withdraw the proposed amendment. The withdrawn rule can be found in the Withdrawn Rules section of this issue of the *Texas Register*.

The adopted amendment to §89.1195, Special Education Complaint Resolution, specifies, in subsection (a), that TEA's complaint resolution process allows for investigation and issuance of findings regarding alleged violations of state special education statute or administrative rule.

The adopted amendment to §89.1195(c) provides clarification on the sixty-calendar-day timeline for resolving a special education complaint and clarification on the one-calendar-year statute of limitations for a special education complaint.

TEA proposed an amendment to §89.1195(d) that would have allowed the agency to provide a copy of a special education complaint to the public education agency against which the complaint is filed if the complainant does not do so. Based on public comment, TEA has determined not to adopt the proposed change.

The adopted amendment to §89.1195(e)(1)(B) clarifies requirements in 34 Code of Federal Regulations (CFR), §300.534, regarding the provision of the Notice of Procedural Safeguards to parents upon the filing of the first state complaint during a school year.

Adopted new §89.1195(h) and (i) explain TEA's general supervisory authority under 34 CFR, §300.600, to investigate credible complaints related to federal and state special education requirements even if a complaint does not meet federal requirements in 34 CFR, §§300.151-300.153. The rule clarifies what a "credible complaint" is and sets out steps the agency can take to address a credible complaint that does not meet federal requirements in 34 CFR, §§300.151-300.153.

Adopted new §89.1195(j) provides for a reconsideration process for credible complaints investigated under TEA's general supervisory authority.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 23, 2022, and ended October 24, 2022. Public hearings on the proposed amendments took place on October 6 and 7, 2022. Following is a summary of the public comments received and agency responses.

Comment: The Texas Council of Administrators of Special Education (TCASE) and an attorney who submitted comments on behalf of the law firm of Thompson and Horton and on behalf of the Texas Association of School Administrators (TASA), the Texas School Alliance (TSA), the Texas Association of Community Schools (TACS), and the Texas Association of School Boards (TASB) contended that Texas's due process hearing program has successfully used the Texas Rules of Civil Procedure to govern hearings with no indication from courts or hearing officers that summary motion practice violates the Individuals with Disabilities Education Act (IDEA). The commenters also stated

that "summary proceeding" and "summary process" are vague terms and that it is unclear if the proposed rule language would prevent the use of summary proceedings, such as a motion to dismiss, in cases outside the scope of a special education hearing officer's jurisdiction. Finally, the commenters suggested that further analysis is needed and recommended abandoning the proposed amendment to §89.1185 until further clarity was gained about which summary proceedings, if any, violate or conflict with rights afforded to the parties under IDEA.

Response: The agency agrees. The agency has determined to withdraw the proposed amendment to §89.1185 at this time and will further engage in analysis to determine what, if any, summary motions violate the rights afforded to the parties under IDEA.

Comment: Two school attorneys, Eichelbaum Wardell Hansen Powell and Munoz, five special education administrators, and an attorney submitting comments on behalf the law firm of Thompson and Horton and on behalf of TASA, TSA, TACS, and TASB contended that the proposed amendment to §89.1185 is based on non-binding guidance from the U.S. Department of Education Office of Special Education Programs (OSEP), could lead to unnecessary legal and judicial costs, and would force hearing officers to hold hearings on matters outside their jurisdiction or with complainants who lack standing. The commenters noted that summary judgement motions aid in the efficiency of due process hearings. The commenters further argued that the proposed language added to §89.1185(d) will result in a drain on resources and time from public education agencies and their staff. The commenters contended that the burden of discovery to prepare for these due process hearings monopolizes the staff's time, effectively reducing their time spent preparing for and teaching students. The commenters contended that parent attorneys may use this as an opportunity to file claims that do not fall under the purview of IDEA. Additionally, the commenters argued that an unintended outcome of this proposed amendment may include the inability to attract teachers to the profession and staff retention issues. TCASE also commented that the proposed language will increase costs and workload.

Response: The agency agrees in part and disagrees in part. While the agency agrees that summary judgment motions may aid in the efficiency of due process hearings, the proposed amendment to §89.1185 does not prohibit prehearing motion practice. It was proposed to address the IDEA guarantee of an opportunity to a special education due process hearing where the parties can present evidence and confront, cross-examine, and compel the attendance of witnesses. Accordingly, regardless of OSEP's recent guidance, the proposed rule language complies with IDEA. Further, whether an attorney leverages the special education due process complaints process is not relevant to the rule amendment process. Nevertheless, the agency recognizes the proposed amendment may have unintended consequences, including the adjudication of claims falling outside of IDEA's jurisdiction. Accordingly, the agency has determined to withdraw the proposed amendment to §89.1185 at this time.

Comment: A school attorney noted that TEA has the authority to limit summary motion practice.

Response: The agency agrees. Nevertheless, the agency has determined to withdraw the proposed amendment to §89.1185 at this time. The agency recognizes that further deliberations are required to adjust this amendment in an effort to promote judicial efficiency while complying with IDEA and in consideration of OSEP guidance.

Comment: A local education agency (LEA) administrator commented that the change to §89.1185(d) is designed to encourage parties to reach a consensus or resolution. Further, the commenter argues that the request for summary judgement/summary processes allows for districts to request a dismissal from a due process hearing, which helps save public funds on costly and lengthy legislation that is deemed frivolous.

Response: The agency disagrees in part and agrees in part. The amendment to §89.1185(d) was not proposed to encourage resolution of the due process hearing complaint. Nevertheless, the proposed amendment's consent requirement could prevent summary judgement proceedings on claims that may have been filed frivolously or do not fall within the purview of IDEA. Accordingly, the agency has decided that additional deliberations are required and has determined to withdraw the proposed amendment to §89.1185 at this time.

Comment: A school district executive director of special programs, a compliance officer for special education, and a director of special education opposed the proposed amendment to §89.1185 because they believe it places an additional burden on districts by redirecting teacher and administrator time and district resources away from the primary duty of schools to teach students. The commenters stated that the proposed amendment would force districts to spend time and resources on investigations that could potentially take years, especially for small schools or schools in co-ops. Additionally, the director of special education, along with an attorney commenting on behalf of the law firm of Thompson and Horton and on behalf of TASA, TSA, TACS, and TASB suggested that the fiscal impact on LEAs would increase due to additional proceedings and hearings taking place.

Response: The agency agrees in part and disagrees in part. The agency agrees that preparing for and participating in the aspects of a special education due process hearing takes time and resources. However, the agency notes that the proposed amendment to §89.1185 would not prohibit prehearing motion practice and that the time and resources associated with participating in due process hearings result not from the proposed rule language but from IDEA's mandate that parties to due process hearings have the right to a hearing in which they may present evidence and confront, cross-examine, and compel the attendance of witnesses. Nevertheless, the agency recognizes that additional efforts are necessary to develop an amendment that will promote both efficiency within the due process hearing system as well as compliance with IDEA. Accordingly, the agency has determined to withdraw the proposed amendment to §89.1185 at this time.

Comment: An attorney commenting on behalf of the law firm of Thompson and Horton and on behalf of TASA, TSA, TACS, and TASB commented that the proposed amendment to §89.1185 conflicts with the prehearing conference procedure in 19 TAC §89.1180(d), which explains that one of the uses of the prehearing conference is to discuss "matters which may aid in simplifying the proceedings or disposing of matters in controversy, including settling matters in dispute."

Response: The agency disagrees. The proposed amendment would not prohibit these discussions. Nevertheless, the agency recognizes the proposed amendment may have unintended consequences. Accordingly, the agency has determined to withdraw the proposed amendment to §89.1185 at this time.

Comment: Disability Rights Texas (DRTx) and TCASE proposed amending §89.1185(d) to require the consent required by the

proposed rule language be documented in writing. DRTx suggested that TEA add the specific language, "may be used only when both parties consent to use a summary process in writing."

Response: The agency agrees that requiring the consent to be documented in writing would alleviate any question as to a party's position. However, the agency has determined to withdraw the proposed amendment to §89.1185 at this time. The agency will consider the commentors' input for future proposed rulemaking.

Comment: Regarding proposed changes to 19 TAC §89.1195, a school administrator contended that public education agencies should continue to receive notice when a special education complaint is filed.

Response: The agency agrees.

Comment: DRTx requested the addition of language to §89.1195(c) that would require the agency to notify the parties of the date that the investigative process commences.

Response: The agency disagrees that the requested language should be added, as notice provided to the parties to a special education complaint includes the date that the complaint was received by the agency. The statute of limitations and the 60-day-calendar timeline for the complaint investigation is based on that received date.

Comment: Two attorneys disagreed with proposed changes to §89.1195(c). The attorneys contended that the timelines should begin on the first business day on which the agency confirms that the complainant provided a copy of the complaint to the public education agency. The attorneys argued that the turnaround time for public education agencies to respond to special education complaints places an undue burden on public education agencies, specifically those that are small or that are in rural communities because of limited staff or the fact that some are operating on four-day school weeks.

Response: The agency disagrees. If there are concerns regarding the deadline by when a public education agency or a complainant must submit the documentation required for a special education complaint, the public education agency or complainant can request an extension. The agency continues to work to improve the system and will address concerns on a case-by-case basis.

Comment: Two attorneys disagreed with proposed changes to §89.1195(d), contending that the statute of limitations for a special education complaint and the 60-day-calendar timeline for the complaint investigation should be based on when the complainant provides a copy of the complaint to the public education agency, not when TEA provides a copy of the complaint to the public education agency. TCASE argued that proposed changes to §89.1195(d) that would allow the agency to provide a copy of a special education complaint to a public education agency if the complainant does not do so violates 34 CFR, §300.153(d), which requires the party filing a special education complaint to provide a copy of the complaint to the public education agency against which the complaint is filed.

Response: While the agency disagrees that 34 CFR, §300.153(d), prohibits the agency from providing a copy of a special education complaint to a public education agency if the complainant has not done so, the agency has determined that the proposed change may create unnecessary confusion for complainants and public education agencies. Therefore, the proposed change to §89.1195(d) will not be adopted.

Comment: Specific to the proposed change to §89.1195(e), two attorneys agreed that parents can already receive an electronic copy of the Notice of Procedural Safeguards if the parent has opted to do so.

Response: The agency agrees.

Comment: Two attorneys and a special education administrator opposed the addition of §89.1195(h) and (i), arguing that it is an expansion of IDEA that is not justified. The commenters stated there is no evidence to show that the current special education complaints system fails to provide the necessary oversight and expanding the program would only increase costs with no return on benefits. The additional complaints would impose an even greater burden on public education agencies.

Response: The agency disagrees. The special education complaints process set out in 34 CFR, §§300.151-300.153, and in §89.1195 is one mechanism through which the agency exercises its general supervisory authority under 34 CFR, §300.149 and §300.600. The general supervisory authority and requirements under IDEA are broader than the special education complaints system and encompass considering and, if appropriate, addressing credible allegations of IDEA noncompliance. The process described in proposed new §89.1195(h) and (i) addresses this.

Comment: Two attorneys and two special education administrators contended that the special education complaints process requires a great deal of resources from public education agencies. The commenters contended that the burden of documentation requested by the agency negatively impacts teachers' ability to provide services to students, and they do not always agree with the agency's investigative findings. The commenters also contended that some complainants may use the special education complaints to coerce districts into agreeing to requests or taking actions that are not required for the provision of a free appropriate public education.

Response: The agency disagrees. The special education complaints process is required by 34 CFR, §§300.151-300.153, which allow the parties to a special education complaint to provide information and documentation in support of or in response to a special education complaint. Requirements related to the development and maintenance of documentation showing a public education agency's compliance with federal special education regulations are set out in the Education Department General Administrative Regulations (EDGAR) in 34 CFR, Parts 76 and 80 (see *Letter to Broussard*, June 2010). The agency makes its determinations in special education complaint investigations based on the information provided by the parties to the complaint and the applicable regulatory and statutory requirements. Whether a student's attorney leverages the special education complaints process is not relevant to the rule amendment process.

Comment: A parent asked that the agency impose sanctions against individuals who file noncredible complaints due to the burden that a special education complaints investigation places on public education agencies and their staff.

Response: The agency disagrees. There is no mechanism in IDEA or state statute that would allow the agency to impose the requested sanctions against a complainant who files a noncredible complaint.

Comment: A parent commented on the challenges that the parent's child has faced as a student with a disability.

Response: This comment is beyond the scope of the proposed rulemaking.

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §89.1080

STATUTORY AUTHORITY. The amendment is adopted under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, §§300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21.

CROSS REFERENCE TO STATUTE. The amendment implements 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, and 300.600, and Texas Education Code, §29.001.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



DIVISION 7. DISPUTE RESOLUTION

19 TAC §89.1195

STATUTORY AUTHORITY. The amendment is adopted under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, §§300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the

administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21

CROSS REFERENCE TO STATUTE. The amendment implements 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, and 300.600, and Texas Education Code, §29.001.

§89.1195. *Special Education Complaint Resolution.*

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA) or a state special education statute or administrative rule.

(b) A complaint may be filed with the TEA by any individual or organization and must:

- (1) be in writing;
- (2) include the signature and contact information for the complainant;
- (3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;
- (4) include the facts upon which the complaint is based;
- (5) if alleging violations with respect to a specific student, include:
 - (A) the name and address of the residence of the student;
 - (B) the name of the school the student is attending;
 - (C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;
 - (D) a description of the nature of the problem of the student, including facts relating to the problem; and
 - (E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;
- (6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and
- (7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.

(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business day, the complaint timeline will commence on the first business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

- (i) the alleged violations that will be investigated;
- (ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;
- (iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;
- (iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);
- (v) a timeline for the public education agency to submit:
 - (I) documentation demonstrating that the complaint has been resolved; or
 - (II) a written response to the complaint and all documentation and information requested by the TEA;
- (vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and
- (vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public education agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.

(C) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline

will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by electronic mail, mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

(h) In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, the TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with the TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, the TEA may take one or more of the following actions:

(1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;

(2) conducting a desk or on-site investigation of a public education agency;

(3) making a determination regarding the allegation(s); and

(4) requiring a public education agency to implement corrective actions to address any identified noncompliance.

(i) For the purposes of subsection (h) of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for the TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints.

(j) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

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

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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

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Commissioner of Insurance adopts amended 28 TAC §3.9901, concerning changes to the valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7857). The rule will not be republished.

REASONED JUSTIFICATION. Amendments to §3.9901 are necessary for compliance with Insurance Code §425.073, which requires the Commissioner to adopt by rule a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC).

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

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016. On August 13, 2022, the NAIC voted to adopt changes to the valuation manual. Forty-six jurisdictions, representing jurisdictions totaling 93.8% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

In addition to clarifying existing provisions, the 2023 valuation manual includes changes that:

- require a hedging strategy be a Clearly Defined Hedging Strategy if modeling future hedging reduces the reserves under Valuation Manual Chapter 20 (VM-20) or Total Asset Recovery under Valuation Manual Chapter 21 (VM-21);

- add guidance and requirements for general assumptions and expense assumptions in VM-21;

- update prescribed swap spreads guidance in VM-20 to facilitate the London Interbank Offered Rate transition to the Secured Overnight Financing Rate; and

- add fields to experience reporting to reflect the dividend plan code and COVID-19 indicator and the change field identifier.

The NAIC's adopted changes to the valuation manual can be viewed at content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition.pdf. Effective January 1, 2023, the adopted manual can be viewed at the following website: content.naic.org/sites/default/files/pbr_data_valuation_manual_current_edition.pdf.

TDI's amendment to §3.9901 is described in the following paragraph.

Amended §3.9901. TDI amends §3.9901 by striking the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 17, 2021, to August 13, 2022.

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

STATUTORY AUTHORITY. The Commissioner adopts amended §3.9901 under Insurance Code §425.073 and §36.001.

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

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

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

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