

Compliance Exceptions

An overview of Texas Administrative Code (TAC) 213.37 and how it affects procurements at Texas State University.



The rising STAR of Texas

Texas Administrative Code 213, Subchapter C

- ❖ Defines compliance rules defining Section 508, exceptions and exemptions to electronic and information resources (EIR) Rules, procurement requirements, training, technical assistance, job descriptions, the creation of an accessibility survey, reporting requirements, and the creation of the Electronic Information Resources Accessibility Coordinator position.
- ❖ TAC Rule 213.38 covers procurement requirements including the acquisition of voluntary product accessibility templates (VPAT) or other accessibility conformance reports (ACR).
 - ACR show conformance with the Web Content Accessibility Guidelines (WCAG) which are referenced by TAC 213 and TAC 206 (website Rules).
 - This Rule includes financial limits where accessibility testing is required by institutions of higher education when procuring EIR (\$500,000 or higher requires testing).
- ❖ TAC Rule 213.37 covers requirements for providing exceptions to the Accessibility Rules of the State of Texas.

Texas Administrative Code 213.37

- ❖ These Rules were updated on April 18, 2020.
- ❖ TAC Rules are derived from Texas Government Code (TGC) 2054.460.
- ❖ According to the Rules, exceptions for a material difficulty or expense pertaining to significant barriers to users under TGC 2054.460 must be approved by the president or chancellor of an institution of higher education for EIR that does not comply with the standards or specifications described in TAC 206 and/or 213.
 - President Trauth delegated this responsibility to Mr. Ken Pierce, Vice President for Information Technology.
 - These exceptions must be approved prior to the procurement, or at the point that a barrier is identified and if the vendor is unable to immediately remedy the compliance failure.

TAC 213.37 Exception Form

- ❖ All compliance exceptions shall include the following information:
 - a date of expiration or duration of the exception (maximum 3 years);
 - a plan for alternate means of access for persons with disabilities;
 - justification for the exception including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and
 - documentation of how the institution of higher education considered alternative solutions and all institution resources available to the program or program component for which the product is being developed, procured, maintained, or used. Examples may include, but are not limited to, institution budget, grants, and alternative vendor or product selections.
- ❖ Texas State is required to file and maintain a list of all compliance exceptions in accordance with our internal record retention schedule.
- ❖ Texas State uses the compliance exception form developed by the Department of Information Resources in order to facilitate better compliance with the above requirements.
- ❖ The EIR Exception form is posted on the Digital Accessibility website.
 - <https://doit.txstate.edu/accessibility/procurement.html>

Guidance for Exception Requests

- ❖ Exceptions are required for electronic resources without valid accessibility conformance reports.
- ❖ Exceptions are required for electronic resources with conformance reports that do not show a reasonable degree of compliance.
 - Reasonable criteria:
 - Public facing components of the electronic resource conform to the Accessibility Rules outlined in TAC 213 and TAC 206 (website rules).
 - Internally facing components of the EIR that are required for the completion of job duties conform to the Accessibility Rules outlined in TAC 213 and TAC 206.
 - All non-conforming criteria identified in the conformance report (VPAT) are not applicable to the use of the software in the public or internally facing use of the EIR.
- ❖ Accommodation plans are very important to the execution of an exception form and can sometimes include the required purchase of secondary software to meet the accessibility needs of users.
 - For this reason, it is not advisable to request exceptions when accessible alternatives for the software procurement exist in the marketplace.

Guidance for Exception Requests (cont.)

- ❖ Units should be prepared to replace excepted electronic resources when the exception period ends, and/or the vendor made no effort to bring their resources into compliance with TAC Rules.
- ❖ In the event of legal action against the university, units should be prepared to prove that the exception request was made in good faith and was not used to expedite a procurement without due diligence.
- ❖ Exceptions should be used as a last resort when the marketplace cannot provide an accessible product for use by university departments.
- ❖ Reasonable expense arguments have historically been rejected during civil rights inquiries.
- ❖ Above all: Procure accessible electronic resources!