TEXAS REGISTER

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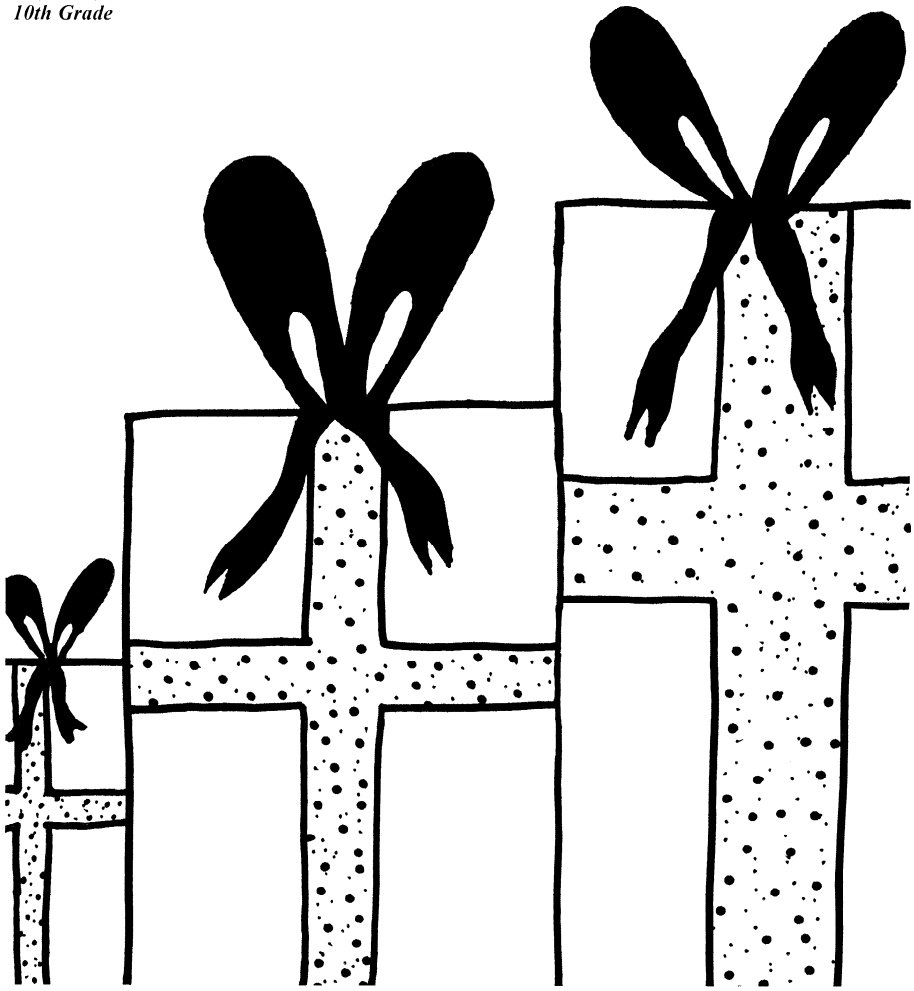
Haylee Dye
10th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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register@sos.texas.gov

In This Issue

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order GA-04

WHEREAS, the nation and our state lost a distinguished leader with the passing of President George Herbert Walker Bush on Friday, November 30, 2018; and

WHEREAS, George H. W. Bush was a World War II veteran who served as one of the youngest aviators in the U.S. Navy; and after the war married Barbara Pierce Bush, his wife of 73 years, graduated from Yale University in just two and half years, and moved to Texas to begin a career in the oil and gas business; and

WHEREAS, he was first elected to public office as a United States Representative from Texas and then served as the Ambassador to the United Nations, Chairman of the Republican National Committee, Chief of the U.S. Liaison Office with the People's Republic of China, and the Director of the Central Intelligence Agency; and

WHEREAS, President Bush served two distinguished terms as vice president before being elected the 41st president of the United States, where he oversaw the end of the Cold War with the collapse of the Soviet Union, the reunification of Germany, and the victory in the First Gulf War; and

WHEREAS, in retirement, President Bush used the years following his presidency to work with other presidents on humanitarian efforts and to urge bipartisan unity on the critical issues facing the country; and

WHEREAS, it is fitting to publicly set aside a day of mourning so all Texans can reflect on the life and person of George Herbert Walker Bush;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Wednesday, December 5, 2018, shall be recognized as an official Day of Mourning. The people of Texas are encouraged to gather, assemble, and pay their respects to the memory of George Herbert Walker Bush through ceremonies in homes, businesses, public buildings, schools, places of worship, or other appropriate places for public expression of grief and remembrance.

To allow state employees to attend such observances, state agencies, offices, and departments shall be closed on that day, and general government operations and services shall be maintained by skeletal work crews.

In addition, and in accordance with a proclamation issued by the President of the United States and by my powers under the Texas Government Code, the flags of the United States of America and of the State of Texas on the State Capitol Building and in the Capitol Complex, at the Governor's Mansion, and upon all state buildings, grounds, and facilities shall be flown at half-staff for a period of 30 days.

I further direct that these flags shall be flown at half-staff for the same length of time at all Texas offices and facilities abroad. Individuals, businesses, municipalities, counties, and other political subdivisions in Texas are encouraged to fly these flags at half-staff for the same length of time as a sign of respect and honor.

Flags should return to full staff at sunrise or the beginning of the display day on Monday, December 31, 2018.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

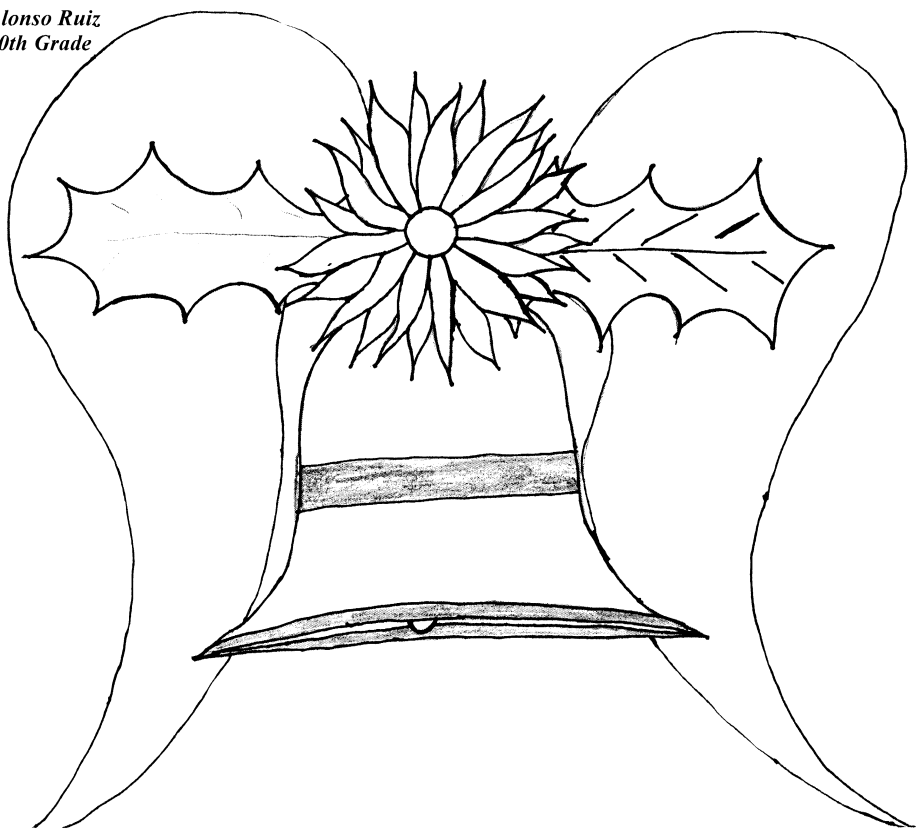
Given under my hand this the 3rd day of December, 2018.

Greg Abbott, Governor

TRD-201805185

♦ ♦ ♦

Alonso Ruiz
10th Grade



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0255-KP

Requestor:

The Honorable Joe Moody

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a local law enforcement agency's "no-chase" policy limits a peace officer's duty to prevent and suppress crime and exposes the peace officer to civil liability for later harm caused by the offender the peace officer failed to chase (RQ-0255-KP)

Briefs requested by January 4, 2019

RQ-0256-KP

Requestor:

The Honorable Joe Moody

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Prompt Pay Act applies to out-of-network claims (RQ-0256-KP)

Briefs requested by January 4, 2019

RQ-0257-KP

Requestor:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether individuals convicted of a felony are eligible to run for office in Texas after completing their sentence and having their voting rights restored (RQ-0257-KP)

Briefs requested by January 4, 2019

RQ-0258-KP

Requestor:

The Honorable James White

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Standards courts apply when balancing the rights of the State against the fundamental rights of parents to raise their children free from government intrusion (RQ-0258-KP)

Briefs requested by January 4, 2019

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201805189
Amanda Crawford
General Council
Office of the Attorney General
Filed: December 4, 2018

♦ ♦ ♦

Sergio Ledesma

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

The Office of the Attorney General (OAG) proposes amendments to Subchapter A (General Provisions and Eligibility) §§60.1 - 60.3, 60.5, 60.8 - 60.11, 60.13, 60.16, 60.17, amendments to Subchapter B (Application, Review and Award Process) §§60.100 - 60.102, amendments to Subchapter C (Grant Budget Requirements) §§60.200 - 60.209, a new section in Subchapter D (Required Attachments) §60.302, amendments to Subchapter E (Administering Grants) §§60.401, 60.405 - 60.408, and amendments to Subchapter F (Program Monitoring and Auditing) §60.502, §60.503.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Article 56.541(f) authorizes the OAG to adopt rules necessary to carry out the Article's provisions. The proposed amendments and new rule will better serve victims of crime by improving the administration of the Texas Crime Victim Services Grant Programs.

Subchapter A (General Provisions and Eligibility) §§60.1 - 60.3, 60.5, 60.8 - 60.11, 60.13, 60.16, 60.17

The proposed amendment §60.1 adds new definitions and renumbers the definitions accordingly.

The proposed amendment to §60.2 replaces "party" with "interested person."

The proposed amendment to §60.3 clarifies the source of grant funds.

The proposed amendment to §60.5 clarifies the purpose of the VCLG program and how the OAG makes grant funding decisions.

The proposed amendment to §60.8 clarifies that eligible applicants may apply for grants to fund certain positions or parts of certain positions.

The proposed amendment to §60.9 removes the match requirement for grants and clarifies that volunteer requirements will be stated in the RFA and Application Kit.

The proposed amendment to §60.10 removes the minimum amount of funding for a grant application from the rule and provides that minimum and maximum amounts will be stated in the RFA and Application Kit.

The proposed amendment to §60.11 clarifies the grant contract period.

The proposed amendment to §60.13 clarifies the criteria for additional award opportunities.

The proposed amendment to §60.16 updates references to federal and state grant requirements.

The proposed amendment to §60.17 requires that information submitted to the OAG not identify a person providing or receiving services.

Subchapter B (Application, Review and Award Process) §§60.100 - 60.102

The proposed amendment to §60.100 generalizes the reference to the OAG and its website.

The proposed amendment to §60.101 clarifies the screening, evaluation, and review process for grant applications.

The proposed amendment to §60.102 clarifies that an applicant's failure to timely return a signed acceptance document to the OAG may be construed as a rejection of the grant award.

Subchapter C (Grant Budget Requirements) §§60.200 - 60.209

The proposed amendment to §60.200 clarifies the federal law applicable to grantees.

The proposed amendment to §60.201 moves the definition of "Employee" to §60.1 and removes the prohibition on the use of grant funds for overtime pay.

The proposed amendment to §60.202 moves the definition of "Fringe benefits" to §60.1 and substitutes the term "employees" for "personnel."

The proposed amendment to §60.203 moves the definition of "Professional and consultant benefits" to §60.1.

The proposed amendment to §60.204 clarifies the criteria for reimbursement of travel expenses.

The proposed amendment to §60.205 moves the definition of "Equipment" to §60.1 and clarifies requirements concerning the use of grant funds for equipment.

The proposed amendment to §60.206 moves the definition of "Supplies" to §60.1 and clarifies the types of allowable items considered to be supplies.

The proposed amendment to §60.207 moves the definition of "Other direct operating expenses" to §60.1.

The proposed amendment to §60.208 moves the definition of "Indirect costs" to §60.1 and clarifies the OAG will not fund any indirect costs.

The proposed amendment to §60.209 removes overtime, out-of-state travel, and dues from the list of unallowable costs.

Subchapter D (Required Attachments) §60.302

New §60.302 requires an applicant to submit all forms required by the Application Kit.

Subchapter E (Administering Grants) §§60.401, 60.405 - 60.408

The proposed amendment to §60.401 removes redundant terms and removes the inventory report from the list of documents the authorized signatory must sign.

The proposed amendment to §60.405 removes the limit on grant adjustments per state fiscal year.

The proposed amendment to §60.406 substitutes the term "subgrantee" for "subcontractor."

The proposed amendment to §60.407 clarifies the federal, state, and local laws applicable to grantees and contractors.

The proposed amendment to §60.408 clarifies that maintenance and retention of grant records is governed by Texas Government Code Chapter 441, Subchapter L, and the grant contract.

Subchapter F (Program Monitoring and Auditing) §60.502, §60.503

The proposed amendment to §60.502 substitutes the term "compliance" for "quality assurance" in both the title and body of the section.

The proposed amendment to §60.503 clarifies audit standards and audit submission requirements.

Melissa Foley, Chief of the Grants Administration Division, has determined that for each of the first five years the proposed rules will be in effect, there are no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Foley has also determined that for each of the first five years the proposed rules will be in effect, the public will benefit from having accurate and current information regarding the Texas Crime Victim Services Grant Programs. There is no anticipated economic cost to persons required to comply with these rules.

The OAG has determined that these rules will not impact local economies. Therefore, the OAG is not required to prepare the local employment impact statement described in Government Code §2001.022.

The OAG has determined that these rules will not have an adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, the OAG is not required to prepare the economic impact statement or regulatory flexibility analysis described in Government Code §2006.002.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. The proposed rules will create one new rule section. The proposed rules will not: 1) create or eliminate a government program; 2) require the creation of new employee positions or the elimination of existing employee positions; 3) require an increase or decrease in future legislative appropriations to the OAG; 4) require an increase or decrease in fees paid to the OAG; 5) expand, limit, or repeal an existing regulation; 6) increase or decrease the number of individuals subject to the rule's applicability; or 7) positively or adversely affect the state's economy.

Written comments on the proposed rules may be submitted for 30 days following the publication of this notice to Melissa Foley, Chief of the Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§60.1 - 60.3, 60.5, 60.8 - 60.11, 60.13, 60.16, 60.17

These amendments and new rule are proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed amendments and new rule affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.1. Definitions.

The following terms and abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Application Kit--The information that is required to be completed and submitted by an applicant for a grant contract;

(2) Applicant--An entity that files an application for a grant contract with the OAG;

(3) CFR--Code of Federal Regulations;

(4) [~~(3)~~] Claimant--An individual as defined in the Texas Code of Criminal Procedure, Article 56.32(a)(2);

(5) [~~(4)~~] COG--Council of Governments, a regional planning commission or similar regional planning agency created under Texas Local Government Code, Chapter 391;

(6) [~~(5)~~] Competitive allocation--The distribution of grant funds to grantees based on an application process as well as an evaluation and review process;

(7) Computing devices--Machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or peripherals) for printing, transmitting and receiving, or storing electronic information;

(8) [~~(6)~~] CVSD--Crime Victim Services Division, a division of the Office of the Attorney General;

(9) [~~(7)~~] Eligible application--An application that meets the minimum requirements set forth in the RFA and Application Kit;

(10) Employee--A person under the direction and supervision of the grantee, who is on the payroll of the grantee and for whom the grantee is required to pay applicable income withholding taxes; or a person who will be on the grantee's payroll and for whom the grantee will pay applicable income withholding taxes once the grant is awarded;

(11) Equipment--Tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the grantee for financial statement purposes or $5,000;

(12) Fringe benefits--Allowances and services provided by the grantee to its employees as compensation in addition to regular salaries and wages;

(13) [~~(8)~~] Grantee--An entity or sub-recipient of an entity that receives a grant contract from the OAG;

(14) Indirect costs--Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective;

(15) Information technology systems--Computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources;

(16) [~~(9)~~] Local criminal prosecutor--A district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases;

(17) [~~(10)~~] Local law enforcement agency--The police department of a municipality or the sheriff's department of any county;

(18) [~~(11)~~] OAG--Office of the Attorney General;

(19) Other direct operating expenses--Costs not included in other budget categories and which are directly related to the day-to-day operation of the grant program;

[~~(12) OMB--Office of Management and Budget;~~]

(20) [~~(13)~~] OVAG--Other Victim Assistance Grants administered by the OAG;

(21) Professional and consultant services--Any service for which the grantee uses an outside source for necessary support;

(22) [~~(14)~~] RFA--Request for Applications;

(23) [~~(15)~~] Special condition--A condition placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the OAG funded portion of a grant program. Special conditions may be placed on a grant at any time;

(24) [~~(16)~~] Statewide program [~~Program~~]--An entity that actively offers or provides victim-related services or assistance in six or more COG regions;

(25) Supplies--All tangible personal property other than that described in paragraph (11) of this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the grantee for financial statement purposes or $5,000, regardless of the length of its useful life;

(26) [~~(17)~~] UGMS--The Uniform Grant Management Standards, promulgated by the Texas Comptroller of Public Accounts [~~Governor's Office of Budget and Planning~~];

(27) [~~(18)~~] VCLG--Victim Coordinator and Liaison Grants administered by the OAG to provide the victim assistance coordinator and crime victim liaison duties as provided in Texas Code of Criminal Procedure, Article 56.04;

(28) [~~(19)~~] Victim--Unless otherwise allowed by law, an individual as defined in the Texas Code of Criminal Procedure, Article 56.32(a)(11); and

(29) [~~(20)~~] Victim-related services or assistance--Pursuant to the Texas Code of Criminal Procedure, Article 56.32(a)(13), compensation, services, or assistance provided directly to a victim or claimant for the purpose of supporting or assisting the recovery of the victim or claimant from the consequences of criminally injurious conduct.

§60.2. Construction of Rules.

Unless otherwise noted, these rules apply to both OVAG and VCLG grant programs. If good cause is established to show that compliance with these rules may result in an injustice to any interested person [~~party~~], the rules may be suspended at the discretion of the OAG.

§60.3. Source of Funds.

(a) Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting victim-related services or assistance. [~~Pursuant to this authorization, the OAG created two types of grant programs, OVAG and VCLG.~~]

(b) The source of grant funds for both programs is a biennial appropriation by the Texas Legislature [~~from specified court costs and fees. The funds are constitutionally dedicated~~]. Allocation of funds in the OVAG program is competitive.

§60.5. Purpose of Funds and Grant Funding Decisions.

(a) The purpose of the OAG VCLG program is to fund the mandated positions described in the Texas Code of Criminal Procedure, Article 56.04, specifically Victim Assistance Coordinators (VAC) in prosecutor offices and Crime Victim Liaisons (CVL) in law enforcement agencies, using a competitive allocation method.

(b) The purpose of the OAG OVAG program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

[~~(c) The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund.~~]

(c) [~~(d)~~] The OAG reserves the right to give priority to programs that provide direct victim services with grant funds, that provide information and education [~~about victims' rights in their community~~], or that utilize volunteers [~~in providing services~~].

[~~(e) The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.~~]

(d) [~~(f)~~] Within its discretion, the OAG shall determine the manner and procedure for making funding decisions that support the efficient and effective use of appropriated [~~public~~] funds.

(e) [~~(g)~~] The OAG may award OVAG funds to programs that would otherwise be eligible for funding under another OAG grant program.

§ 60.8. VCLG Eligible Applicants.

The following entities are eligible to apply under the VCLG program:

(1) [~~(a)~~] A local criminal prosecutor may apply for a grant to fund a Victim Assistance Coordinator (VAC) position, or part of a VAC position, as defined in Article 56.04 (a); and [~~A local criminal prosecutor may apply for a grant to fund the position of a victim assistance coordinator.~~]

(2) [~~(b)~~] A local law enforcement agency may apply for a grant to fund a Crime Victim Liaison (CVL) position, or part of a CVL position, as defined in Article 56.04 (c) and (d) of the Texas Code of Criminal Procedure. [~~A local law enforcement agency may apply for a grant to fund the position of crime victim liaison.~~]

§60.9. [~~Match and~~] Volunteer Requirements.

[~~(a) The OAG may require cash and/or in-kind match for grants as stated in the RFA and the Application Kit. The amount of an~~

award and the match requirements are determined solely by the OAG. The OAG reserves the right to alter the required match for any funded program.]

(b) [All non-governmental OVAG programs must have a volunteer component.]

The specific requirements for the volunteer component will be stated in the RFA and the Application Kit.

§60.10 Funding Levels.

(a) For OVAG [VCLG] and VCLG [OVAG] programs, the minimum and maximum [amount of funding] for which an applicant may apply [is $20,000] per fiscal year is stated in the RFA and the Application Kit.

[(b) The OAG may establish different minimum and maximum amounts of funding for an OVAG statewide program.]

[(c) The maximum amount of funding for an OVAG and VCLG grant contract will be stated in the RFA and the Application Kit.]

(b) [(d)] The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

§60.11. Grant Contract Period.

(a) Generally, grant contracts may be awarded for any number of months up to a two year period unless stated otherwise in the RFA [beginning September 1st and ending August 31st].

(b) The OAG reserves the right to alter the starting date and length of the grant contract period.

(c) If the grant contract period extends for more than one fiscal year, the grantee may be required to submit additional documentation relating to the subsequent fiscal year of the grant contract period, including an updated budget. The OAG may base its decision on subsequent fiscal year funding amounts on the grantee's prior performance, including but not limited to the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the program in meeting its goals.

§60.13. Additional Award Opportunities.

(a) The OAG may fund programs outside the standard application cycle or process or at amounts higher or lower than provided for in this chapter based on availability of funds and an identified [a particularized] need.

(b) The OAG may choose to award a grant contract from [or re-designate a grant contract once awarded to] a different funding source than that [grant] for which the applicant applied [filed an application or received funding].

§60.16. Compliance with Other Standards.

(a) Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

(b) The relevant standards include, but are not limited to:

(1) Uniform Grant Management Standards (UGMS) adopted pursuant to the Uniform Grant and Contract Management Act [of 1981], Texas Government Code, Chapter 783. These requirements apply to all [both OVAG and VCLG] grants, including grants to non-profit corporations; and

(2) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as set forth in federal regulations. [All applicable OMB Circulars, and in particular, OMB Circulars A-21, A-87, A-102, A-110, A-133.]

§60.17. Use of the Internet.

(a) The OAG may transmit notices, forms or other documents and information via the Internet or other electronic means.

(b) The OAG may require the submission of notices, forms or other documents and information via the Internet or other electronic means.

(c) Transmission or submission via electronic means meets the relevant requirements contained within this chapter for submitting information in writing. Submitted information may not disclose any information received from reports, collected case information, or site-monitoring visits that would identify a person providing or receiving services.

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

Filed with the Office of the Secretary of State on November 28, 2018.

TRD-201805034
Amanda Crawford
General Counsel
Office of the Attorney General
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 475-3210

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SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

1 TAC §§60.100 - 60.102

These amendments are proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed amendments affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.100. Application Process.

(a) The OAG will publish a RFA in the *Texas Register* and post the RFA on the OAG's official agency website [at www.oag.state.tx.us].

(b) The RFA, at a minimum, will provide the following information:

(1) applicable funding sources for the types of grants available and eligibility requirements;

(2) how to obtain Application Kits;

(3) deadlines and filing instructions for the grant application;

(4) minimum and maximum amounts of funding available;

(5) start date and length of grant contract period;

(6) any match or volunteer requirements;

(7) award criteria;

(8) any prohibitions on the use of grant funds; and

(9) OAG contact information.

(c) After the RFA is published in the *Texas Register,* the Application Kit will be available on the official agency website [~~at www.oag.state.tx.us, or an applicant may request an Application Kit from the CVSD~~].

(d) An applicant must submit an application to the OAG [~~CVSD~~], as referenced in the RFA.

(e) The application, with the required attachments, must be filed and received by the OAG [~~CVSD~~], by the deadline and manner stated in the RFA.

(f) Once the application is filed, it will be initially screened for eligibility, and if eligible it will be evaluated and reviewed, and a grant decision will be made.

(g) Providing false information, knowingly or unknowingly, on a grant application may cause an application to be denied or cause the grant contract, once awarded, to be terminated.

§60.101. ~~[Initial]~~ Screening,~~[:]~~ Evaluation, and Review Process.

(a) The OAG determines [~~will initially screen each application for~~] eligibility for an award. Applications that are not eligible will not be scored further and will not be eligible for a grant award. If an applicant is deemed ineligible by the OAG, that applicant will not receive a grant. [~~Applications will be deemed ineligible if:~~]

~~[(1) The applicant did not register timely an intent to apply, if required;]~~

~~[(2) The application is submitted by an ineligible applicant;]~~

~~[(3) The application is not filed in the manner and form required by the RFA;]~~

~~[(4) The application is filed after the deadline established in the RFA; or]~~

~~[(5) The application does not meet other requirements as stated in the RFA and the Application Kit.]~~

(b) The OAG will [~~may~~] designate teams to screen, evaluate, and review [~~eligible~~] applications. The evaluation teams may consist of OAG employees, employees of other state agencies, or other designees. Evaluation factors will be developed to assess the award criteria as stated in the RFA or [~~and~~] Application Kit.

(c) During the [~~initial~~] screening, [~~or~~] evaluation, or [~~and~~] review process, an applicant may be contacted to provide additional information.

(d) There are several steps in the screening, evaluation, and review process. A decision to deny an application may be made at any point during the [~~evaluation and review~~] process.

§60.102. Grant Decision Notification Process.

(a) The OAG shall notify the applicant in writing of its decision regarding a grant award.

(b) The OAG may utilize a grant contract document or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to act to accept the grant award and to return the appropriate document to the OAG within the time prescribed by the OAG. An applicant's failure to return the signed document to the OAG within the applicable time period may [~~will~~] be construed as a rejection of the grant award, and the OAG may de-obligate funds.

(c) The OAG may add special conditions to the grant award. Until satisfied, these special conditions will affect the grantee's ability to receive funds. If special conditions are not resolved, the OAG may de-obligate the entire amount of the grant award.

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

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Amanda Crawford
General Counsel
Office of the Attorney General
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For further information, please call: (512) 475-3210

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SUBCHAPTER C. GRANT BUDGET REQUIREMENTS

1 TAC §§60.200 - 60.209

These amendments are proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed amendments affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.200. General Budget Provisions.

(a) Unless otherwise stated by the Request for Applications and the Application Kit, eligible budget categories are limited to the following categories:

(1) personnel;

(2) fringe benefits;

(3) professional and consultant services;

(4) travel;

(5) equipment;

(6) supplies; and

(7) other direct operating expenses.

(b) All applicants must submit a completed budget on the form prescribed by the OAG.

(c) Grants awarded by the OAG are reimbursement-only grants. Grantees are reimbursed for authorized actual expenditures substantiated by documentation submitted to the OAG, as requested. If necessary, the OAG may use an alternative method of payment.

(d) An individual paid with grant funds may not receive dual compensation for the same work, even if the services performed benefit more than one entity.

(e) All grantees, including but not limited to non-profit entities and local governmental agencies, must follow the rules and requirements as outlined in UGMS[,] and all federal regulations [~~applicable OMB federal circulars~~].

(f) For budget items funded partially by the OAG, an entity must have a documented method for the allocation of direct costs con-

sistent with the benefit received and must maintain adequate receipts and records.

(g) All budget items must be reasonable and necessary and be allocated proportionately within each budget category.

(h) The OAG is not obligated to fund budget items at the amounts requested by the applicant and is not obligated to continue to fund budget items once a grant has been awarded.

§60.201. Personnel.

(a) The personnel budget category may include salaries of employees only, and not compensation paid to independent contractors. [~~"Employee" is defined as a person under the direction and supervision of the grantee, who is on the payroll of the grantee and for whom the grantee is required to pay applicable income withholding taxes; or a person who will be on the grantee's payroll and for whom the grantee will pay applicable income withholding taxes once the grant is awarded.~~]

(b) Salaries for grant funded positions must be reasonable and comply with the grantee's salary classification schedule. If a grantee does not have a classification schedule, the grantee must maintain documentation supporting that the salary is commensurate with that paid in the geographic area for positions with similar duties and qualifications. In any event, the OAG will determine whether a salary is reasonable and may limit the grant funded portion of any salary.

(c) The OAG may set minimum restrictions on the percentage of salary that may be funded.

~~[(d) A grantee may not use grant funds to pay overtime.]~~

(d) [~~(e)~~] Any changes to the job duties or employment status of a grant funded position must be reported to the OAG immediately.

(e) [~~(f)~~] A grantee may not use grant funds to pay any portion of the salary or any other compensation for an elected government official.

§60.202. Fringe Benefits.

(a) [~~"Fringe benefits" is defined as allowances and services provided by the grantee to its employees as compensation in addition to regular salaries and wages.~~] Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans.

(b) Grant funds may be used to pay fringe benefits of an employee only if grant funds are also being used to pay for the salary of the same employee.

(c) A grantee must provide grant-funded personnel the same fringe benefits provided to all other non-grant-funded employees [~~personnel~~] of the grantee.

§60.203. Professional and Consultant Services.

(a) [~~"Professional and consultant services" is defined as any service for which the grantee uses an outside source for necessary support.~~] Professional and consultant services include, but are not limited to, accounting services, counseling, legal services, and computer support.

(b) Any contract or agreement entered into by a grantee that obligates grant funds must be in writing and consistent with Texas contract law. Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation. Grantees must establish a contract administration and monitoring system to regularly and consistently ensure that contract deliverables are provided as specified in the contract.

(c) Grant funds may not be used to pay for any professional and consultant services for a person or vendor who participates directly in writing a grant application.

§60.204. Travel.

(a) Travel expenses may be reimbursed according to the Texas State Travel Guidelines, unless a grantee's travel policy provides a lesser reimbursement.

(b) Travel expenses must be reasonable and necessary for activities funded on the grant. [~~Travel must relate directly to the delivery of services that supports the program that is funded by the OAG grant.~~]

(c) Grant funds requested in the travel category should be for grant-related travel performed by grant-funded staff and volunteers assigned to the grant only. [~~Grant funds may not be used to pay for out-of-state travel.~~]

(d) Travel must relate directly to the delivery of services that supports the program funded by the OAG grant.

§60.205. Equipment.

(a) A grantee may use equipment paid for with OAG funds only for grant-related purposes and not for personal or non-grant-related purposes. [~~"Equipment" is defined as an article of non-expendable, tangible personal property having a useful life of more than one (1) year and a per unit acquisition cost which equals the lesser of:~~]

~~[(1) the capitalization level established by the grantee for financial statement purposes; or]~~

~~[(2) $5,000.]~~

~~[(b) A grantee may use equipment paid for with OAG funds only for grant-related purposes and not for personal or non-grant-related purposes.]~~

(b) [~~(c)~~] Grant funds may not be used to [~~fund the~~] purchase or lease [~~of~~] vehicles.

§60.206. Supplies.

(a) [~~"Supplies" is defined as consumable items directly related to the day-to-day operation of the grant program.~~] Allowable items include, but are not limited to, office supplies, paper, postage, [~~and~~] education resource materials, and certain computing devices described in §60.1(25) of this chapter.

(b) The OAG will not approve funds for the purchase of program promotional items or recreational activities.

§60.207. Other Direct Operating Expenses.

~~[(a) "Other direct operating expenses" is defined as those costs not included in other budget categories and which are directly related to the day-to-day operation of the grant program.]~~

(a) [~~(b)~~] Funds may not be used to purchase food and beverages.

(b) [~~(c)~~] Registration fees for conferences and other training sessions should be included in this category.

§60.208. Indirect Costs.

~~[(a) "Indirect costs" is defined as any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.]~~

[~~(b)~~] The OAG will not fund indirect costs [~~for VCLG and OVAG programs~~].

§60.209. Unallowable Costs.

(a) OAG grant funds may not be used for the following:

(1) to pay for [~~overtime, out-of-state travel, dues, or~~] lobbying;

(2) to purchase food and beverages except as allowed under Texas State Travel Guidelines;

(3) to purchase or lease vehicles;

(4) to purchase promotional items or recreational activities;

(5) to pay for travel that is unrelated to the direct delivery of services that supports the OAG funded program;

(6) to pay consultants or vendors who participate directly in writing a grant application; or

(7) any unallowable costs set forth in state or federal cost principles.

(b) Funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within the RFA or the Application Kit.

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

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Amanda Crawford
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SUBCHAPTER D. REQUIRED ATTACHMENTS

1 TAC §60.302

This new rule is proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed new rule affects Texas Code of Criminal Procedure, Article 56.541(e).

§60.302. Other Required Forms.

An applicant must submit all other required forms as listed in the Application Kit.

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

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§60.401, 60.405 - 60.408

These amendments are proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed amendments affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.401. Grant Contact and Authorized Signator.

(a) A grantee must have the following designees:

(1) Grant contact [~~the grant contact~~] must be an employee of the grantee who is responsible for operating and monitoring the project and who is able to readily answer questions about the grant project's day-to-day operations. All grant-related information will be sent to this contact person.

(2) Authorized signator [~~the authorized signator~~] is the person authorized to apply for, accept, decline, or cancel the grant for the applicant entity. This person signs all grant adjustment requests, [~~inventory reports,~~] progress reports, and financial reports, as well as any other official documents related to the grant. This person may be, for example, the executive director of the entity, or a county judge, mayor, city manager, assistant city manager, or designee authorized by the governing body in the resolution.

(b) Any changes in the grant contact or authorized signator must be submitted in writing to the OAG immediately.

(c) An authorized signator may designate alternate persons to sign certain grant documents.

§60.405. Grant Adjustments.

(a) Within each fiscal year, a grantee may transfer funds between direct cost line items in different approved budget categories, not to exceed a cumulative total of ten percent of the approved grant budget during that year, without requesting a grant adjustment from the OAG.

(b) If it becomes necessary to move funds that are greater than ten percent of the total budget between existing budget categories, revise the scope or target of the program, add new budget categories, or alter project activities, a grantee must first request and receive approval from the OAG for a grant adjustment. The person designated to make such requests or the authorized signator must sign all grant adjustment request forms.

[~~(c) The OAG will allow only one grant adjustment per state fiscal year unless:~~]

[~~(1) the grantee demonstrates circumstances that the OAG deems adequately extenuating; or~~]

[~~(2) the OAG requests the grant adjustment.~~]

§60.406. Copyrights.

If a grantee uses any OAG funds to purchase or receive a copyright or for a subgrantee [~~subcontractor~~] to purchase or receive a copyright,

the OAG reserves a royalty-free and irrevocable license to reproduce, publish, use, or authorize others to use the copyrighted material.

§60.407. Procurement, Property Management, and Contract Oversight Procedures.

A grantee shall use the procurement procedures, property management procedures, and contract oversight guidelines set forth in UGMS and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as set forth in federal regulations. A grantee must comply with UGMS and all applicable state and local laws and regulations.

§60.408. Maintenance of Records.

(a) The grantee shall maintain adequate records to support its charges, procedures, and performances to the OAG for all work related to the grant. The grantee also shall maintain such records as are deemed necessary by the OAG and auditors of the State of Texas, the United States, or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to the grant. [~~Such records include, but are not limited to:~~]

[~~(1) A copy of any required licenses or certifications of any individual who holds a grant-funded position.~~]

[~~(2) Time and attendance records for all grant-funded positions. These records must include the number of hours worked each day on the project, the signature of the employee, and the signature of the supervisor. Any further documentation requested by the OAG shall be maintained by the grantee for audit and monitoring purposes.~~]

[~~(3) Documentation showing that the terms of any grant-funded third-party contracts are being met.~~]

[~~(4) Adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, expenses, and explanations of grant-related activities performed during the travel.~~]

[~~(5) Verification of completion of training and other related records.~~]

[~~(6) Records of the disposition, replacement or transfer of any equipment purchased with grant funds. The retention period for these records begins on the date of the disposition, replacement or transfer.~~]

[~~(7) Records of any litigation, claims, or audits involving the grant.~~]

(b) The grantee shall maintain and retain records as required by Texas Government Code Chapter 441, Subchapter L, and the grant contract. [~~for a period of four (4) years after the submission of the final expenditure report all such records as are necessary to fully disclose the extent of services provided under the contract. However, if four years after the submission of the final expenditure report, the records are subject to or implicated in pending litigation, claims, or audits, they must be retained until those matters have been fully and finally resolved.~~]

(c) Records may be retained in an electronic format.

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

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SUBCHAPTER F. PROGRAM MONITORING AND AUDITING

1 TAC §60.502, §60.503

These amendments are proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed amendments affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.502. Compliance [~~Quality~~] Assurance.

(a) Compliance [~~Quality assurance~~] reviews include programmatic monitoring, financial monitoring, and financial auditing.

(b) The OAG will conduct compliance [~~quality assurance~~] reviews throughout the existence of a grant. A grantee must make all grant-related records available to OAG representatives unless the information is sealed by law.

(c) Compliance [~~Quality assurance~~] reviews may be on-site or desk reviews and may include any information that the OAG deems relevant to the project.

(d) The OAG, or its designee, may make unannounced visits at any time.

(e) The OAG reserves the right to conduct its own audit or contract with another entity to audit any grantee.

(f) Based on the information gathered during monitoring or auditing, the OAG will issue a compliance [~~quality assurance~~] report.

(g) A grantee must submit documentation to the OAG responding to any findings and questioned costs contained in the report.

(h) The compliance [~~quality assurance~~] determination of the OAG is final and not subject to judicial review.

§60.503. Audit Standards.

(a) Grantee will contract with an independent, licensed CPA firm to perform an annual financial audit engagement. If applicable, grantee's independent, licensed CPA firm will determine the type of annual financial audit, which may include a compliance attestation in accordance with federal audit requirements and/or Texas Single Audit Circular (Single Audit or non-Single Audit financial audit). [~~The OAG requires a grantee to conduct or undergo an annual audit of a grant, including subgrants, based on federal or state audit requirements and following audit standards set forth in UGMS and all applicable federal circulars.~~]

(b) A grantee must submit to the OAG one copy [~~copies~~] of all audit reports, including audits as required in UGMS and all other audits that a grantee undergoes, regardless of the purpose. The grantee must submit an audit report [~~Such reports must be submitted~~] to the OAG within 30 calendar days after receipt of the auditor report, or nine months after the end of the audit period. [~~of completion.~~]

(c) OAG grant funds may only be used for the fair and reasonable share of audit costs required by the OAG, in accordance with

applicable federal and state cost principles governing allowability and allocation.

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

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Amanda Crawford
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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §60.404

The Office of the Attorney General (OAG) proposes the repeal of Subchapter E, §60.404 concerning inventory reporting for the Texas Crime Victim Services Grant Programs.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Article 56.541(f) authorizes the OAG to adopt rules necessary to carry out the Article's provisions. The proposed repeal of §60.404 will better serve victims of crime by improving the administration of the Texas Crime Victim Services Grant Programs.

The proposed repeal of §60.404 will eliminate the requirement to file a separate inventory report for equipment. At the same time, the OAG is proposing amendments to §60.1, Definitions, and §60.408, Maintenance of Records, to align the OAG's rules on equipment with the Uniform Grant Management Standards.

Melissa Foley, Chief of the Grants Administration Division, has determined that for each of the first five years the proposed repeal will be in effect, there are no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Foley has also determined that for each of the first five years the proposed repeal will be in effect, the public will have benefit from having accurate and current information regarding the Texas Crime Victim Services Grant Programs. There is no anticipated economic cost to persons required to comply with the repeal.

The OAG has determined the proposed repeal will not impact local economies. Therefore, the OAG is not required to prepare the local employment impact statement described in Government Code §2001.022.

The OAG has determined the proposed repeal will not have an adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, the OAG is not required to prepare the economic impact statement or regulatory flexibility analysis described in Government Code §2006.002.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. The proposed repeal will remove the existing §60.404 from Subchapter E, Chapter 60 and decrease the number of individuals subject to the rule's applicability. The proposed repeal will not: 1) create or eliminate a government program; 2) require the creation of new employee positions or the elimination of existing employee positions; 3) require an increase or decrease in future legislative appropriations to the OAG; 4) require an increase or decrease in fees paid to the OAG; 5) create a new regulation; or 6) positively or adversely affect the state's economy.

Written comments on the proposed repeal may be submitted for 30 days following the publication of this notice to Melissa Foley, Chief of the Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

The repeal of §60.404 is proposed under Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules necessary to implement Article 56.541, including rules concerning the use of money for grants or contracts that support crime victim-related services or assistance.

The proposed repeal affects Texas Code of Criminal Procedure, Article 56.541(e).

§60.404. Inventory Reporting.

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

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 11. TEXAS OFFICE OF PRODUCE SAFETY

The Texas Department of Agriculture (TDA or the Department) proposes new Title 1, Part 4, Chapter 11, Texas Office of Produce Safety, Subchapter A, General Provisions, §§11.1 - 11.4, relating to General Provisions; Subchapter B, Coverage and Exemptions, §§11.20 - 11.23; and Subchapter C, Compliance and Enforcement, §§11.40 - 11.43. The proposed new rules are for TDA's administration of the Food Safety Modernization Act (FSMA), P.L. 111-353, and the rules established by the United States Food and Drug Administration (FDA) to comply with FSMA for produce, titled "Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption," 21 CFR Part 112, commonly referred to as the

Produce Safety Rule. By working cooperatively with producers, the Produce Safety Rule helps shift the food safety regulations from a reactive system that focuses on responding to contamination to a proactive one that focuses on preventing them. The proposed rules establish definitions; clarify persons covered by the Produce Safety Rule; and set forth the compliance and enforcement framework.

Through a cooperative agreement with the FDA, the Department is administering the Produce Safety Rule to advance efforts for a nationally integrated food safety system. As part of the cooperative agreement, the Department established the Texas Office of Produce Safety (TOPS) within TDA to administer the Produce Safety Rule. As part of its duties, TOPS will enhance current produce programs within the Department that encourage the safe production of fresh fruits and vegetables. Additionally, TOPS offers additional outreach programs to educate producers and promote understanding and compliance with the requirements of the Produce Safety Rule.

The proposal is necessary for the administration of the Produce Safety Rule, and to protect Texas consumers and producers by ensuring that food grown, harvested, and packed for human consumption meets the requirements of the rule. The proposed rules are designed to minimize the risk of serious adverse health consequences or death from consumption of contaminated produce. Additionally, the proposal establishes recordkeeping requirements that, in the event of an outbreak, enable TOPS to review producer records and work with FDA to track the potential sources of contamination. TDA will implement the proposed rules while working in cooperation with the fresh fruit and vegetable industries in Texas, to reassure consumers in Texas and nationwide that Texas produce meets national standards designed to protect individuals and families from foodborne illness.

Prior to filing this proposal, the Department held stakeholder meetings across the state to take input on TDA's implementation of the standards contained in the FDA's Produce Safety Rule. The attendees, which included local producers, industry representatives and food retailers, provided valuable feedback regarding the administration of the national produce safety program in Texas. Stakeholder recommendations were taken under consideration in the development of the proposed rules.

Stakeholders and the public recognize that a foodborne outbreak could cause wide-spread illness in humans and have a significant negative impact on the state's economy, as well as that of local communities. Additionally, all businesses in the produce continuum such as producers, processors, transporters, and restaurants that could potentially serve contaminated produce, may suffer economic damages associated with possible recalls and potential litigation. Other organizations that grow, distribute, or sell the same type of produce may see decreased demand resulting in a reduction in sales volume and market share throughout the nation. Thus, these proposed regulations protect public health, welfare and safety in addition to furthering the state and industry's economic interests.

Industry and the public are generally aware that the Produce Safety Rule includes national standards established by the FDA to comply with FSMA, and that covered farms within the State of Texas are required to follow these standards. Since the inception of the produce safety program, TDA has worked, and continues to work, to protect the public interest while minimizing the impact and cost of this program on producers.

Richard De Los Santos, Director of the Texas Office of Produce Safety, has determined that there will be no fiscal impact to state government as a result of implementing the proposed rules. The program and all associated direct and indirect costs are fully funded by the FDA. There will be no fiscal impact to local governments as a result of the implementation of this proposal.

Mr. De Los Santos has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit as a result of administering the proposed rules will be to safeguard consumers and provide them with reasonable assurance that produce and farms in Texas covered by the Produce Safety Rule meet national standards intended to minimize the risk of serious adverse health consequences or death from consumption of contaminated produce. As with all federal regulations, affected producers and industry will absorb costs associated with compliance with the Produce Safety Rule. However, TDA lacks sufficient data to quantify the effect on small and micro-businesses at this time. The cost of compliance with the Produce Safety Rule for affected producers will depend on various factors, including the size of the operation and whether it currently utilizes documentation and other tools necessary for compliance. TDA does not anticipate that there will be an adverse fiscal impact on rural communities related to the implementation of this proposal.

Mr. De Los Santos has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

(1) the Texas Office of Produce Safety was created;

(2) an additional 10 employee positions will be created over the course of 5 years, no existing Department staff positions will be eliminated; and

(3) there will be an increase in future legislative appropriations to the Department.

Additionally, Mr. De Los Santos has determined that for the first five years the proposed rules are in effect:

(1) there will be no increase or decrease in fees paid to the Department, as this program is funded by the FDA, and TDA is not required to assess license or inspection fees in order to implement or finance this program;

(2) new regulations will be created by the proposal;

(3) there will be an increase to the number of individuals subject to the proposal, as this is a new program; however, many farms may claim a qualified exemption from the requirements of this proposal; and

(4) the proposal will positively affect the Texas economy by protecting the public health and Texas fruit and vegetable industry by helping prevent foodborne illness outbreaks shifting food safety regulations from a system that focuses on responding to contamination to one that focuses on preventing it.

Written comments on the proposal may be submitted to Richard De Los Santos, Director of the Texas Office of Produce Safety, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711; or by email to *RuleComments@TexasAgriculture.gov.* Comments must be received no later than January 31, 2019.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§11.1 - 11.4

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.1. Definitions.

In addition to the definitions set forth in 21 CFR Part 112, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) CFR--Code of Federal Regulations.

(2) Department--The Texas Department of Agriculture.

(3) FDA--Food and Drug Administration.

(4) Produce Safety Rule--21 CFR Part 112: Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption.

(5) Raw agricultural commodity--Food as defined in section 201 of the Federal Food, Drug, and Cosmetic Act.

(6) TOPS--Texas Office of Produce Safety.

§11.2. Covered Produce.

(a) Covered produce. Covered produce includes produce listed in 21 CFR §112.1.

(b) Produce that is not covered.

(1) The following produce is "not covered" by the Produce Safety Rule under 21 CFR §112.2(a):

(A) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management;

(B) produce that is not a raw agricultural commodity; and

(C) produce that is rarely consumed raw, specifically the produce on the following exhaustive list: Asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts.

(2) A farm which solely produces produce that is "not covered" is not subject to the Produce Safety Rule or this chapter.

(3) Produce is eligible for exemption from the requirements of this part if the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance.

§11.3. Covered Farms.

The following is a covered farm under the Produce Safety Rule and this chapter:

(1) a farm which produces covered produce sold during the previous 3-year period in an amount more than $25,000 (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment;

(2) a farm which has its primary production that is devoted to growing, harvesting (such as hulling or shelling), packing, and/or holding of raw agricultural commodities; or

(3) a farm which is performs covered activities, including manufacturing/processing of covered produce on a farm, but only to the extent that such activities are performed on raw agricultural commodities.

§11.4. FDA Coordinated Outbreak Response and Evaluation ("CORE") Network.

(a) Subject to its cooperation agreement with FDA, TOPS will work in coordination with the Coordinated Outbreak Response and Evaluation ("CORE") Network to respond to an outbreak which has been identified by CORE.

(b) FDA will be the lead agency conducting on-site visits and inspections related to an outbreak.

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

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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SUBCHAPTER B. COVERAGE AND EXEMPTIONS

4 TAC §§11.20 - 11.23

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.20. Farm Inventory Survey.

A farm in Texas which grows covered produce is required to submit a Farm Inventory Survey to determine whether it is exempt, covered, or eligible for a qualified exemption from the requirements of the Produce Safety Rule.

§11.21. Qualified Exemption.

TOPS shall conduct a pre-assessment review to determine whether a farm is covered by the Produce Safety Rule and/or eligible for a Qualified Exemption.

(1) A covered farm is eligible for a Qualified Exemption if it meets the requirements of 21 CFR §112.5.

(2) A covered farm which is eligible for a Qualified Exemption under 21 CFR §112.5, must establish and maintain adequate

records demonstrating compliance with criteria necessary for qualified exemption as required by 21 CFR §112.7(b).

(3) A covered farm eligible for a Qualified Exemption is subject to the modified requirements set forth in 21 CFR §112.6, and this chapter.

§11.22. Verification of Eligibility.

(a) Qualified Exemption determinations for covered farms shall be calculated on a yearly basis, valid until their anniversary date, which is one (1) year from the date of issuance by TOPS. A covered farm shall be required to reaffirm eligibility for a Qualified Exemption status upon its anniversary date.

(b) TDA will provide notice of the required reaffirmation and renewal of a Qualified Exemption by sending a Qualified Exemption Verification Form to the farm's last known address, as reflected in TDA's records, at least 30 days prior to the anniversary date.

(c) Failure to return a Qualified Exemption Verification Form within 45 days after its anniversary date shall result in a required on-site visit by TOPS to reevaluate exemption, coverage, or eligibility for a qualified exemption. Failure to return a Qualified Exemption Verification Form within 60 days of the anniversary date shall result in the presumption by TOPS that the farm is subject to all requirements of the Produce Safety Rule and this chapter.

(d) At any time, TOPS reserves the right to schedule an on-site visit to verify whether a farm is exempt, covered, or eligible for a Qualified Exemption.

§11.23. Change in Eligibility.

If a farm's qualification for an exemption or eligibility for a Qualified Exemption changes, or if its qualified exemption is withdrawn by the Food and Drug Administration as outlined in 21 CFR Part 112, Subpart R, the farm will be considered "Covered" and will be subject to all requirements of the Produce Safety Rule and this chapter.

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

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

4 TAC §§11.40 - 11.43

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.40. Right of Entry.

(a) Right of Entry. During normal business hours, TOPS may enter the premises of a covered or Qualified Exempt farm, and all locations or areas where there are activities, conditions, produce, and equipment on covered and qualified exempt farms, or at any other location where covered activities occur:

(1) to examine records; or

(2) to conduct inspections.

(b) TOPS may enter the premises of a covered and exempt/or Qualified Exempt farm, and all locations or areas where there are activities, conditions, produce, and equipment on covered and qualified exempt farms, or at any other location where covered activities occur, to respond to any emergency involving an egregious condition, as defined in §11.42 of this title (relating to a Stop Sale), at any time.

(c) Failure to comply with a TOPS examination or inspection, or interfering with TOPS' ability to perform its duties under this section, shall result in a violation, as stated in §11.41 of this title (relating to Enforcement and Penalties).

§11.41. Enforcement and Penalties.

(a) The following actions may be taken, and penalties may be assessed in response to findings of violations of the Produce Safety Rule.
Figure: 4 TAC §11.41(a)

(b) A Corrective Action Plan may be developed by the producer and approved by TOPS in response to one or more findings by TOPS that result in a violation during an inspection. Implementation of the Corrective Action Plan must fully and permanently correct the deficiency upon re-inspection.

§11.42. Stop Sale.

(a) A Stop Sale Order may be issued upon a finding of an egregious condition, which is a practice, condition or situation on a farm or in a covered location that is reasonably likely to lead to:

(1) serious adverse health consequences to, or death of, a human from the consumption or exposure to covered produce; or

(2) an imminent public health hazard if corrective action is not taken immediately.

(b) A Stop Sale Order shall apply to all commodities, lots, batches, or bins that are determined to be non-compliant, at-risk, or affected by the egregious condition. A Stop Sale Order may also include covered produce that is stored or in transit.

§11.43. Complaint Investigation.

(a) Any person with reasonable cause to believe that any provision of the Produce Safety Rule or this chapter has been violated may file a complaint with TOPS.

(b) TOPS may, in its sole discretion, investigate the complaint and make a full written report.

(c) A final and complete inspection report will be made available upon written request by concerned parties or the public to the extent authorized under Chapter 552 of the Texas Government Code.

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

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.6

The Texas State Securities Board proposes an amendment to §101.6, concerning Historically Underutilized Business Program. The amendment would update references to the Comptroller of Public Accounts' rules found at 34 TAC, Part 1 Comptroller of Public Accounts, Chapter 20 Statewide Procurement and Support Services, Subchapter D Socio-Economic Program, Division 1 Historically Underutilized Businesses, §§20.281 - 20.298. This amendment is necessary to reflect changes the Comptroller of Public Accounts made to 34 TAC §§20.281 - 20.298.

Derek Lauterjung, Director, Staff Services Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Lauterjung has also determined that for each year of the first five years the rule is in effect, the public benefit expected as a result of adoption of the proposed amendment will be accurate and current information regarding the Board's participation in the Historically Underutilized Business Program. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Lauterjung has determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Government Code, §2161.003. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2161.003 requires that a state agency adopt the rules of the Comptroller of Public Accounts regarding Historically Underutilized Businesses under Government Code §2161.002 as its own.

The proposed amendment affects Texas Government Code, §2161.003.

§101.6. Historically Underutilized Business Program.

The State Securities Board adopts by reference the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program, contained in Title 34, Part 1, Chapter 20, Subchapter D [~~B~~], of the Texas Administrative Code.

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

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TRD-201805137
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 305-8303

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CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.5

The Texas State Securities Board proposes an amendment to §103.5, concerning Petitions, to add a cross-reference to §2001.021 of the Texas Government Code, which is implemented by this provision. In connection with any proposed rulemaking (new or amendment), the Government Code requires the Agency to engage in certain analyses of the economic, fiscal, employment, and cost impact of the proposal. To help facilitate the Staff being able to compile this information in connection with rulemaking requested through the petition process, paragraph (5) would be added to the rule to collect that information, to the extent that it is available to the petitioner.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Derek Lauterjung, Director, Staff Services Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have determined that for each year of the first five years the rule is in effect the public benefit expected as a result of the adoption of the proposed amendment will be that the public will have accurate information regarding the petition process and the petitioner will be alerted of the cost information that the Agency will need to go forward with proposing a new rule or rule change. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Mr. Lauterjung, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1, and Texas Government Code, §2001.021. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2001.021 requires state agencies to adopt rules prescribing the form for a rulemaking petition and the procedure for its submission, consideration, and disposition.

The proposed amendment affects Texas Civil Statutes, Articles 581-2-5, 581-4.N, 581-4.P, 581-5.T, 581-7.A, 581-8, 581-12.C, 581-12-1.B, 581-13.D, 581-19.B, 581-28.A, 581-28.B, 581-28-1.B, 581-28-1.D, 581-42.A, 581-42.B., 581-44, 581-45.N, and Texas Government Code §2001.021.

§103.5. Petitions.

Pursuant to Texas Government Code, §2001.021, any [~~Any~~] interested person may petition the Commissioner requesting the adoption of a rule, and within 60 days the Commissioner will initiate rulemaking proceedings, or deny the petition in writing, stating his or her reasons therefor. The petition must set forth the following:

(1) The text of the proposed rule and a brief explanation thereof.

(2) A statement of the statutory or other authority under which the rule is proposed.

(3) A statement of the particular statute or statutes and sections thereof to which the proposed rule relates.

(4) A concise statement of the principal reasons for adoption of the rule; and the date submitted and by whom.

(5) If available to the petitioner(s), the following analyses related to the adoption of the rule:

(A) an analysis supporting the draft government growth impact statement required by Texas Government Code, §2001.0221;

(B) an analysis supporting the economic impact statement required by Texas Government Code, §2006.002;

(C) an analysis supporting the regulatory flexibility analysis required by Texas Government Code, §2006.002;

(D) an analysis supporting the takings impact assessment required by Texas Government Code, §2007.043;

(E) an analysis supporting the local employment impact statement required by Texas Government Code, §2001.024(a)(6);

(F) an analysis supporting the cost-benefit analysis required by Texas Government Code, §2001.024(a)(5);

(G) an analysis supporting the fiscal note required by Texas Government Code, §2001.024(a)(4); and

(H) if Texas Government Code, §2001.0045(b) would apply to the adopted rule:

(i) identify the proposed repeal or amendment that is being suggested to offset costs of the adopted rule; and

(ii) explain the reasoning behind the estimate of the costs that would be offset by the proposed repeal or amendment.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.5

The Texas State Securities Board proposes an amendment to §104.5, concerning Registration of Dealers and Investment Advisers--Review of Applications, to recognize the recent reorganization of the Registration Division and to more closely mirror the review process in §104.4 for securities registration.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed rule is in

effect there will be no foreseeable fiscal implications for the state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be to accurately reflect the review process for registrations. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the proposed rule's applicability; and it does not positively or negatively affect the state's economy. The rule as proposed does not create a new regulation, and it does not expand, limit or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Government Code §2005.003. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 2005.003 requires state agencies issuing permits to adopt procedural rules for processing permit applications and issuing permits.

The proposal affects Texas Civil Statutes, Articles 581-13 and 581-15, and Texas Government Code §2005.003.

§104.5. Registration of Dealers and Investment Advisers--Review of Applications.

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

(e) Within 14 days of the division staff's recommendation, any remaining issues shall be addressed by the Director (or an Assistant Director) of the Registration Division and the Deputy Commissioner. Additional comments, if any, raised at this stage of review must be communicated to the applicant immediately.

(f) - (g) (No change.)

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board proposes an amendment to §113.14, concerning Statements of Policy. The amendment would adopt by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended by NASAA on May 6, 2018. The amendment would also correct the placement of an apostrophe in subsection (b)(6).

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for the state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll also have determined that for each year of the first five years the rule is in effect the public benefit expected as a result of adoption of the proposed amendment will be to increase uniformity with other states when reviewing applications to register securities. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. The rule as proposed does not create a new regulation, and it does not expand, limit or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board

at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.14. Statements of Policy.

(a) (No change.)

(b) In order to promote uniform regulation, the following NASAA Statements of Policy shall apply to the registration of securities:

(1) Corporate Securities Definitions, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(2) (No change.)

(3) Loans and Other Material Affiliated Transactions, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

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

(6) Promoters' [~~Promoter's~~] Equity Investment, as amended by NASAA on September 11, 2016;

(7) - (8) (No change.)

(9) Underwriting Expenses, Underwriter's Warrants, Selling Expenses, and Selling Security Holders, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(10) Unsound Financial Condition, as amended by NASAA on May 6, 2018 [~~March 31, 2008~~];

(11) - (21) (No change.)

(c) (No change.)

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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CHAPTER 133. FORMS

7 TAC §133.17

The Texas State Securities Board proposes the repeal of §133.17, which adopts by reference the Crowdfunding Exemption Notice form used to claim the exemption in §139.25, which is concurrently being proposed for repeal. The form and exemption are being repealed because they have been replaced with a new, more-flexible offering exemption and form to coordinate with the recently-adopted SEC Rule 147A.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the repeal is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Edgar, Ms. Diaz and Mr. Yarroll also have determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of adoption of the proposed repeal will be that a form that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the repeal of the rule adopting by reference the form is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; it does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals an existing form that is used to claim an exemption that has also been proposed for repeal.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Article 581-5.T and Article 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Article 581-7.

§133.17. Crowdfunding Exemption Notice.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes the repeal of §139.25, concerning Intrastate Crowdfunding Exemption. The exemption is being repealed because it has been replaced with a new, more-flexible offering exemption (§139.26) to coordinate with the recently-adopted SEC Rule 147A.

Clint Edgar, Deputy Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Edgar, Ms. Diaz and Mr. Yarroll also have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that an exemption that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the repeal of the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; it does not create a new regulation; and it does not limit or expand an existing regulation. The proposed repeal repeals an existing regulation that has been replaced with a new, more-flexible intrastate offering exemption.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581-7 and 581-12.

§139.25. Intrastate Crowdfunding Exemption.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 14, 2018, issue of the Texas Register.)

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §7.125(a)(3), local government retention schedule CC (Records of County Clerks), 13 TAC §7.125(a)(4), local government retention schedule DC (Records of District Clerks), 13 TAC §7.125(a)(5), local government retention schedule PS (Records of Public Safety Agencies), and 13 TAC §7.125(a)(8), local government retention schedule LC (Records of Justice and Municipal Courts).

The proposed amendments include revisions necessary to keep the schedule up-to-date with current laws and administrative rules, and to improve retention of public records. Specifically, House Bill 2398, 84th Legislative Session, revised court jurisdiction and procedures relating to truancy and Senate Bill 1304, 85th Legislative Session, revised Chapter 58 of Texas Family Code. This legislation requires revised retention requirements for juvenile records.

SUMMARY. The proposed amendments to §7.125(a)(3) - (5) and (8) revise record series and guidance related to juvenile records. One change to §7.125(a)(5) reflects repeal of a statute unrelated to juvenile records.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(3).

The proposed amendment to the header of Section 3-6 updates language to reflect changes in statute and removes unnecessary guidance.

The proposed amendment to CC1700-05 reorganizes similar records under a single series. The Record Title, Record Description and Retention Period of CC1700-05a are revised to reflect statutory language. The Record Title and Record Description of CC1700-05b are revised to reflect statutory language and Remarks is revised to correct the citation.

The proposed amendment to CC1700-06 revises the Record Title and Record Description to reflect county clerk as the recipient of this report.

The proposed amendment to CC1700-07 removes the series from schedule CC because the county clerk neither prepares nor receives this report.

The proposed amendment to CC1700-08 removes the series from schedule CC because it is not appropriate for county clerk recordkeeping. When provided to court, these records are CC1700-10.

The proposed amendment to CC1700-09 revises the Record Title and Record Description to simplify the schedule and improve clarity.

The proposed amendment to CC1700-10 removes subseries CC1700-010a and CC1700-10b and revises the Record Description and Remarks to reflect changes in statute.

The proposed amendment to CC1700-11 removes the series from schedule CC because it is not appropriate for county clerk recordkeeping. When provided to court, these records are CC1700-10.

The proposed amendment to CC1700-12 adds the Record Description to improve clarity.

The proposed amendment to CC1700-14 revises the Record Description to reflect statutory language.

The proposed amendment to CC1700-15 revises the Record Description and Remarks to reflect changes in statute, simplify the schedule, and improve clarity. The retention period is reduced from permanent to as long as nonduplicated, nonexpired files are stored in the database to promote local autonomy and flexibility.

The proposed amendment to CC1700-17 adds a record series for records related truant conduct to reflect changes in statute.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(4).

The proposed amendment to the header of Part 4 updates language to reflect changes in statute and removes unnecessary guidance.

The proposed amendment to DC2100-05 reorganizes similar records under a single series. The Record Title, Record Description and Retention Period of DC2100-05a are revised to reflect statutory language. The Record Title and Record Description of DC2100-05b are revised to reflect statutory language and Remarks is revised to correct the citation.

The proposed amendment to DC2100-06 revises the Record Title and Record Description to reflect district clerk as the recipient of this report.

The proposed amendment to DC2100-07 removes the series from schedule DC because the district clerk neither prepares nor receives this report.

The proposed amendment to DC2100-08 removes the series from schedule DC because it is not appropriate for district clerk recordkeeping. When provided to court, these records are DC2100-10.

The proposed amendment to DC2100-09 revises the Record Title and Record Description to simplify the schedule and improve clarity.

The proposed amendment to DC2100-10 removes subseries DC2100-010a and DC2100-10b and revises the Record Description and Remarks to reflect changes in statute.

The proposed amendment to DC2100-11 removes the series from schedule DC because it is not appropriate for district clerk recordkeeping. When provided to court, these records are DC2100-10.

The proposed amendment to DC2100-12 adds the Record Description to improve clarity.

The proposed amendment to DC2100-14 revises the Record Description to reflect statutory language.

The proposed amendment to DC2100-15 revises the Record Description and Remarks to reflect changes in statute, simplify the schedule, and improve clarity. The retention period is reduced from permanent to as long as nonduplicated, nonexpired files are stored in the database to promote local autonomy and flexibility.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(5).

The proposed amendment to PS4125-04 removes reference to a repealed statute from Remarks.

The proposed amendment to the header of Section 2-5 updates language to reflect changes in statute and removes unnecessary guidance.

The proposed amendment to PS4225-05 reorganizes similar records under a single series. The Record Title, Record Description and Retention Period of PS4225-05a are revised to reflect statutory language. The Record Title and Record Description of PS4225-05b are revised to reflect statutory language.

The proposed amendment to PS4225-06 reorganizes similar records under a single series. The Record Title and Record Description of PS4225-06a are revised to simplify the schedule and improve clarity. The Record Title, Record Description, and Remarks of PS4225-06b are revised to simplify the schedule and improve clarity. The Record Title and Record Description of PS4225-06c are revised to simplify the schedule and improve clarity and the Remarks are revised with citation to statute. The Record Title and Remarks of PS4225-06d are revised to simply the schedule and reflect changes in statute.

The proposed amendment to PS4225-07 reorganizes similar records under a single series. The Record Title and Record Description of PS4225-07a are revised to simplify the schedule and improve clarity. The Record Title and Description of PS4225-07b are revised to simplify the schedule and improve clarity.

The proposed amendment to PS4225-12 revises the Record Title and Record Description to simplify the schedule and improve clarity.

The proposed amendment to PS4225-13 removes the series from schedule PS to simplify the schedule. Probation departments should follow series PS4225-06d common to law enforcement, prosecutors, and juvenile probation departments.

The proposed amendment to PS4225-14 removes subseries PS4225-14a and PS4225-14b to reflect changes in statute and PS4225-14d because it duplicates parts of PS4225-14. The Record Description is revised to improve clarity and remove records included in other record series on schedule PS. The Remarks is revised with guidance for Records Management Officers and citations to statutes prescribing the retention periods.

The proposed amendment to PS4225-15 replaces the two year retention period prescribed by the Commission with the retention period prescribed by regulation. The Remarks are revised with citation to this regulation.

The proposed amendment to PS4225-16 revises the Record Description and Remarks to reflect changes in statute, simplify the schedule, and improve clarity. The retention period is reduced from permanent to as long as nonduplicated, nonexpired files are stored in the database to promote local autonomy and flexibility.

The proposed amendment to PS4225-17 removes the series from schedule PS to simplify the schedule. Prosecuting attorneys should follow series PS4225-06d common to law enforcement, prosecutors, and juvenile probation departments.

The proposed amendment to PS2575-01 revises the Record Description to exclude juvenile records and the Remarks direct prosecutors to follow juvenile records requirements in series PS4225-06d.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(8).

The proposed amendment to the header of Part 5 updates language to reflect changes in statute and removes unnecessary guidance.

The proposed amendment to LC2450-01 revises the Record Title, Record Description and Retention Period of LC2450-01 to reflect statutory language.

The proposed amendment to LC2450-02 removes this series from schedule LC because justice of the peace and municipal courts cannot be designated by a juvenile board to receive these reports.

The proposed amendment to LC2450-03 removes this series from schedule LC because it is not appropriate for justice of the peace or municipal clerk recordkeeping. When provided to court, these records are LC2450-05.

The proposed amendment to LC2450-04 removes this series from schedule LC because justice of the peace and municipal courts cannot be designated by a juvenile board to receive these reports.

The proposed amendment to LC2450-05 removes subseries LC2450-05a and LC2450-05b and revises the Record Description and Remarks to reflect jurisdiction and changes in statute.

The proposed amendment to LC2450-06 removes the series from schedule LC because it is not appropriate for justice of the peace or municipal clerk recordkeeping. When provided to court, these records are LC2450-05.

The proposed amendment to LC2450-07 adds the Record Description to improve clarity.

The proposed amendment to LC2450-09 removes this series based on jurisdiction of justice of the peace and municipal courts.

The proposed amendment to LC2450-10 revises the Record Description and Remarks to reflect changes in statute, simplify the schedule, and improve clarity. The retention period is reduced from permanent to as long as nonduplicated, nonexpired files are stored in the database to promote local autonomy and flexibility.

The proposed amendment to LC2450-11 removes this series based on jurisdiction of justice of the peace and municipal courts.

The proposed amendment to LC2450-12 adds a record series for records related truant conduct to reflect changes in statute.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records and will increase access to those records by the public.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that

the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Sarah Jacobson, Manager, Records Management Assistance, via email sjacobson@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The amended section is proposed under Texas Government Code §441.158 that requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Texas Government Code §441.160 that allows the commission to revise the schedules.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Texas Government Code §441.158 and §441.160, as well as Texas House Bill 2398, 84th Legislative Session, which amended court jurisdiction and procedures relating to truancy, and Texas Senate Bill 1304, 85th Legislative Session, which amended Chapter 58 of the Texas Family Code. No other statutes, articles, or codes are affected by these amendments.

§7.125. Records Retention Schedules.

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.
Figure: 13 TAC §7.125(a)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, Revised 3rd Edition.
Figure: 13 TAC §7.125(a)(3)
~~[Figure: 13 TAC §7.125(a)(3)]~~

(4) Local Schedule DC: Records of District Clerks, Revised 3rd Edition.
Figure: 13 TAC §7.125(a)(4)
~~[Figure: 13 TAC §7.125(a)(4)]~~

(5) Local Schedule PS: Records of Public Safety Agencies, Revised 4th Edition.
Figure: 13 TAC §7.125(a)(5)
~~[Figure: 13 TAC §7.125(a)(5)]~~

(6) Local Schedule SD: Records of Public School Districts, 3rd Edition.
Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.
Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, Revised 2nd Edition.
Figure: 13 TAC §7.125(a)(8)
~~[Figure: 13 TAC §7.125(a)(8)]~~

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.
Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd Edition.
Figure: 13 TAC §7.125(a)(10) (No change.)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.
Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.
Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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

Filed with the Office of the Secretary of State on November 28, 2018.

TRD-201805072
Craig Kelso
Director
Texas State Library and Archives Commission
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 463-5534

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.22

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §363.22 concerning reexamination of applicants. The Board finds that the initial reason for adopting §363.22 is still relevant since examining applicants is an integral part of the Board's mission to ensure that plumbing work meets professional standards, which promotes the health, safety, and welfare of the public. In furtherance of this objective, the Board has proposed these amendments to address the increased demand of applicants seeking licensure through the Board to perform work in the plumbing trade. This will result in more licensed individuals engaging in plumbing, thus fostering a healthy and safe environment that protects the welfare of the public.

SECTION-BY-SECTION OVERVIEW

The proposed amendments to §363.22 provide that an applicant is not required to retake the entire multi-part examination if the applicant fails any part of the examination.

Additionally, the Board is proposing the repeal of §363.22(b), which requires an applicant to retake the entire multi-part examination if that individual fails any part of it.

The amendments to §363.22(a) and the repeal of §363.22(b) are proposed pursuant to §2001.039 of the Texas Government Code, and announced by the Board in the December 14, 2018, issue of the *Texas Register.*

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director of the Board, approves the Board's analysis that for each year of the first five years that the proposed amendments will be in effect, the following will occur:

1. There will be no additional estimated cost to the state and to local government.

2. There will be an estimated reduction in costs due to not furnishing to applicants at the appointed exam date all of the necessary testing materials for all parts of the examination.

3. It is not estimated that there will be either a loss or gain in revenue to the state or local government.

PUBLIC BENEFITS/COST NOTES

Texas has experienced a continual economic growth and hence population growth. A growth in population fosters an environment of various new commercial and residential construction. This has prompted the Board to evaluate the proposed rule amendments and repeal. Ms. Hill has determined that for each of the five years the proposed amendments are in effect, the public would benefit from the proposed rule amendments and repeal due to preventing the delay of qualified individuals from entering the plumbing trade. More qualified plumbers will benefit the public since these individuals are responsible for the safety, health and welfare of the residents of Texas and those visiting Texas due to the impact plumbing has on the daily lives of the public. There are no anticipated costs of compliance associated with the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSSES, AND RURAL COMMUNITIES

There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the amendments to this rule as proposed. There is no effect on local economy for the first five years that the proposed rule is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.0124(a)(6).

COSTS TO REGULATED PERSONS

Ms. Hill has evaluated the potential costs that may be incurred by individuals seeking to enter the plumbing trade and has determined that there will not be any probable costs that would negatively impact those that are regulated under the authority of the Board, thus serving as a legitimate barrier to anyone contemplating entering the plumbing trade.

There is no effect on the local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT

The first five years that the rule amendments of §363.22(a) and the repeal of §363.22(b) are in effect, the following will occur:

1. A government program will not be created or eliminated.

2. Employee positions will not be created or eliminated.

3. Future legislative appropriations for this agency will not increase or decrease.

4. Fees that are paid to this agency will not increase or decrease.

5. No new regulation will be imposed as a result.

6. It will not expand, limit, or repeal an existing regulation.

7. The number of individuals subject to the rule amendment will increase thus addressing the increased demand of applicants seeking to enter the plumbing trade.

8. A positive effect on the state's economy due to qualified individuals engaging in plumbing.

TAKINGS IMPACT ASSESSMENT: Ms. Hill has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENTS

The Board welcomes written public comments concerning the proposed amendments. All written public comments must be received within 30 days after publication in the *Texas Register.* Please send all written public comments to Texas State Board of Plumbing Examiners, Attention: Lisa G. Hill, P.O. Box 4200, Austin, Texas 78765-4200 or via email to *info@tsbpe.texas.gov.* When emailing your public comments, please list "363.22" in the subject line. Additionally, we accept public comments via the telephone by calling (512) 936-5200.

STATUTORY AUTHORITY

The rule amendments are proposed in accordance with §1301.251(2) of the Texas Occupations Code, which enables the Board to adopt and enforce rules necessary to its ability to administer all applicable rules and regulations within its purview.

No other code, articles or statutes are affected by this rule.

§363.22. Reexamination.

(a) An applicant that fails <u>any</u> [a] single part of a multiple part examination may retake the part <u>or parts</u> that <u>were</u> [~~was~~] failed without having to retake the entire examination.

(1) A failing score on a single part of an examination is a score of 69.9 points or less.

(2) A time limit of three (3) hours is allotted for reexamination of the part that was failed.

(3) The applicant must submit a new exam application and fee in order to retake the part that was failed.

[~~(b) An applicant that fails more than a single part of a multiple part examination must retake the entire examination.~~]

(b) [~~(c)~~] An applicant who fails any part or parts of an examination shall complete a training period before the applicant may retake the examination. The length of the required training period is determined by the number of times the applicant has failed as follows:

(1) first failure: 30-day training period;

(2) second failure: 60-day training period; and

(3) third and subsequent failures: 90-day training period.

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

Filed with the Office of the Secretary of State on November 29, 2018.

TRD-201805082
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 936-5200

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.9, Licensed Specialist in School Psychology.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE AMENDMENT. The proposed amendment is necessary to repeal language that has been superseded. The proposed amendment is also necessary to ensure the agency complies with its mission and statutory authority by prohibiting the unlicensed practice of school psychology. This change will ensure that unlicensed individuals are prohibited from circumventing the protections afforded by licensure by filing an application, practicing during the pendency of that application, and then simply reapplying after the application has expired, thereby renewing their authority to practice without a license under the provisions of this rule.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, but it amends an existing regulation; it does not expand or repeal an existing regulation, but it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Regis-*

ter. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

STATUTORY AUTHORITY. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment pursuant to the authority found in §501.260 of the Tex. Occ. Code which authorizes the Board by rule to issue a license to a licensed specialist in school psychology, to set the standards to qualify for such a license, and to issue rules of practice for such licensees.

No other code, articles or statutes are affected by this rule.

§463.9. Licensed Specialist in School Psychology.

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree; and

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a Nationally Certified School Psychologist (NCSP); or documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA); and

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service.

(b) Training Qualifications.

(1) Applicants for licensure as a specialist in school psychology who hold a valid NCSP certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship requirements of this rule.

(2) Applicants for licensure who do not hold a valid NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited academic institution. Applicants applying under this paragraph must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited academic institution. A maximum of 12 internship hours may be counted toward the 60 hour requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology. Applicants applying under this paragraph must submit evidence of graduate level coursework as follows:

(A) Psychological Foundations, including:

(i) biological bases of behavior;

(ii) human learning;

(iii) social bases of behavior;

(iv) multi-cultural bases of behavior;

(v) child or adolescent development;

(vi) psychopathology or exceptionalities;

(B) Research and Statistics;

(C) Educational Foundations, including any of the following:

(i) instructional design;

(ii) organization and operation of schools;

(iii) classroom management; or

(iv) educational administration;

(D) Assessment, including:

(i) psychoeducational assessment;

(ii) socio-emotional, including behavioral and cultural, assessment;

(E) Interventions, including:

(i) counseling;

(ii) behavior management;

(iii) consultation;

(F) Professional, Legal and Ethical Issues; and

(G) A Practicum.

(c) Completion of internship. Applicants must have completed an internship with a minimum of 1200 hours. The internship must also meet the following criteria:

~~[(1) Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with Board rule §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must be supervised by an individual qualified in accordance with Board rule~~

§465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered forspecialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.]

[(2) Applicants must have completed an internship with a minimum of 1200 hours. The internship must also meet the following criteria:]

(1) [(A)] At least 600 of the internship hours must have been completed in a public school.

(2) [(B)] The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Board rule §463.11(d)(1) and (d)(2)(C) of this title.

(3) [(C)] Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) [(D)] No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) [(E)] Unless authorized by the Board, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) [(F)] Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) [(G)] Internship hours must be obtained in not less than one or more than two academic years.

(8) [(H)] An individual completing an internship under this rule must be designated as an intern.

(9) [(I)] Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) [(J)] The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

[(3) Paragraph (2) of this subsection, along with all of its subparts, shall take effect, supersede, and take the place of paragraph (1) of this subsection on September 1, 2017.]

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2) - (9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination and obtain at least the current cut-off score for the NCSP certification before applying for licensure as a specialist in school psychology. Following approval to sit for Board exams, an applicant must take and pass the Jurisprudence Examination within the time required by Board rule §463.19.

(f) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Board's Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Board's Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Board upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(g) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Board that has not been denied, returned, or gone void under Board rule §463.2 of this title (relating to Application Process); or

(C) the individual has been issued a trainee status letter.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under Section 501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Board.

(4) The authority to practice referenced in paragraphs (1)(B) and (C) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule. The Board will not issue more than one trainee status letter to an individual, regardless of the number of applications filed.

[(g) Provision of psychological services in the public schools by unlicensed individuals. An unlicensed individual may provide psychological services under supervision in the public schools if:]

[(1) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;]

[(2) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Board that has not been denied, returned, or gone void under Board rule §463.2 of this title (relating to Application Process; or]

[(3) the individual has been issued a trainee status letter.]

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

Filed with the Office of the Secretary of State on November 28, 2018.

TRD-201805060
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 305-7700

♦ ♦ ♦

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.11, Licensed Psychologists.

Overview and Explanation of the Proposed Rule Amendment. The proposed rule amendment is necessary because subsection (c)(1) is duplicative of the requirement set out in subsection (a)(1). The proposed rule amendment will also serve to clarify the provisional licensure requirement. Lastly, the proposed rule amendment will also serve to ensure those applicants who completed their doctoral degree prior to September 1, 2017, but who did not also complete a formal internship within their degree program, are not precluded from full licensure.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons.

The proposed rule amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, but it amends an existing regulation; it does not expand or repeal an existing regulation, but it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses; if the proposed rule amendment is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the proposed rule amendment, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of

the statute under which the proposed rule amendment is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologists.

(a) Application Requirements. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of active [~~current~~] licensure as a provisionally licensed psychologist in good standing.

(2) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship should be documented by the Director of Internship Training when possible, but may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program if the Director of Internship Training is unavailable.

(3) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) An applicant who is actively licensed as a psychologist in another jurisdiction, and who meets each of the following requirements, is considered to have met the requirements for supervised experience under this rule:

[~~(1) The applicant must be actively licensed as a provisionally licensed psychologist with no restrictions on his or her license.~~]

(1) [~~(2)~~] The applicant must affirm that he or she has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred or completed; and

(2) [~~(3)~~] The applicant must submit a self-query report from the National Practitioner Data Bank (NPDB) reflecting no disciplinary history, other than disciplinary history related to continuing education or professional development. The report must be submitted with the application in the sealed envelope in which it was received from the NPDB.

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program. A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant who received his or her doctoral degree prior to September 1, 2017. Following the conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting; while licensed or authorized to practice in another jurisdiction; or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained prior to September 1, 2016 may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this subsection if the experience was obtained under the supervision of a licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

(i) Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:

(I) the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or

(II) the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

(ii) The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(I) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

(II) proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

(III) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(IV) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have

entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact.

(vii) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

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

Filed with the Office of the Secretary of State on November 28, 2018.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.2, 801.11 - 801.19, 801.42 - 801.58, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141, 801.174, 801.203, 801.204, 801.232 - 801.235, 801.237, 801.262, 801.268, 801.291 - 801.294, 801.297 - 801.303, 801.331, 801.332, 801.351, and 801.362 - 801.364; new §§801.74 - 801.76, 801.142, 801.143, 801.201, 801.202, 801.236, 801.263, 801.264, 801.266, 801.296, and 801.304; and the repeal of §§801.142, 801.143, 801.172, 801.173, 801.201, 801.202, 801.236, 801.263 - 801.267, and 801.296, concerning the licensing and regulation of marriage and family therapists.

BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency. Sections 801.1, 801.2, 801.11 - 801.19, 801.41 - 801.58, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171, 801.174, 801.201 - 801.204, 801.231 - 801.237, 801.261 - 801.264, 801.266, 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351, and 801.361 - 801.364 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of marriage and family therapists are still needed; however, changes are needed as described in this preamble and are the result of the comprehensive rule review undertaken by the board and the board's staff. The board proposes introduction of new §§801.74 - 801.76, and §801.304. Sections 801.172, 801.173, 801.265, and 801.267 are proposed for repeal as explained in this preamble.

In general, each section was reviewed and proposed for readoption in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

SECTION-BY-SECTION SUMMARY

This section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are proposed for the chapter in order to meet the objectives of the agency review of rules as de-

scribed in this preamble, such as improving draftsmanship and ensuring clarity.

Non-substantive changes were made to various sections of the chapter, including conformance to HHSC Rule Drafting Guidelines, such as use of parallel construction: §801.114; separate ideas: §§801.18, 801.112, 801.235, 801.263, and 801.351; use active voice: §§801.11, 801.18, 801.72, 801.92, 801.112, 801.201, 801.268, 801.292, 801.297, 801.300, and 801.363; use present tense: §§801.51, 801.72, 801.112, 801.174, 801.201, 801.203, 801.204, 801.232, 801.233, 801.234, 801.268, 801.291, 801.297 - 801.300, 801.303, 801.331, 801.351, and 801.364; use singular, not plural nouns: §§801.2, 801.13801.44, 801.56, 801.58, 801.113, 801.232, 801.266, 801.268, and 801.303; specify time period: §801.18, 801.142, 801.143, and 801.297; do not use "and/or" or other sets of words with slash marks: §§801.44, 801.58, 801.91, 801.114, 801.297, and 801.331; use the defined terminology consistently: §§801.17, 801.18, 801.42 - 801.44, 801.57, 801.71, 801.111, 801.114, 801.115, 801.141, 801.143, 801.202, 801.232, 801.233, 801.235, 801.263, 801.298, 801.300, 801.331, and 801.351; "Including" is term of enlargement, omit "but not limited to,": §§801.2, 801.44, 801.43, 801.53, 801.58, 801.133, and 801.204; spell out numbers one through ten and use numerals for numbers 11 and above, unless the number is the first word in a sentence: §§801.48, 801.56, 801.114, 801.115, and 801.263; use obligation words appropriately, such as 1) "must" imposes a duty (never use shall): §§801.12, 801.44, 801.46, 801.48, 801.49, 801.51 - 801.58, 801.112, 801.142, 801.143, 801.174, 801.204, 801.232, 801.235, 801.237, 801.262, 801.268, 801.291, 801.297, and 801.364; 2) "may" indicates discretion to act or grants permission: §§801.237, 801.262, and 801.298; and 3) "may not" imposes a prohibition: §§801.11 - 801.19, 801.44 - 801.48, 801.50, 801.52, 801.53, 801.56 - 801.58, 801.204, 801.232, 801.268, and 801.297; use simple words instead of complex words or phrases; such as 1) "before" for "prior to": §§801.11, 801.44, 801.56, 801.73, 801.93, 801.74, 801.234, 801.293, 801.300, 801.301, 801.351, and 801.363; 2) "begin" for "initiate" or "commence": §§801.12, 801.44, and 801.56; 3) "end" for "terminate": §801.44; and 4) "use" for "utilize": §801.42 and §801.56; omit needless words: §§801.2, 801.11, 801.1, 801.13, 801.18, 801.19, 801.43 - 801.45, 801.143, 801.174, 801.201, 801.203, 801.232, 801.235, 801.237, 801.291, 801.292, 801.297, 801.300, 801.331, 801.351, 801.362, and 801.363; avoid redundancies: §801.12, 801.44, 801.115, 801.174, 801.202, 801.267, and 801.362; cross-reference to law: §§801.2, 801.11, 801.13, 801.14, 801.18, 801.42, 801.44, 801.48, 801.57, 801.58, 801.204, and 801.291; cross-reference another rule: §§801.2, 801.174, 801.203, 801.235, and 801.351 and cross-reference Code of Federal Regulations: §801.2; as well as the addition of clarifying language to sections entitled "Purpose": §§801.1, 801.71, 801.91, 801.111, 801.141, 801.171, 801.231, 801.261, 801.331, and 801.361; and the addition of clarifying language to sections entitled "General": §§801.72, 801.112, 801.232, and 801.291.

The following are proposed changes concerning Subchapter A. Introduction.

The amendments to §801.2 add definitions for "Disciplinary action," "Health and Human Services Commission," "Informal settlement conference," "Jurisprudence exam," "Licensure examination," "Respondent," and "Supervision hour"; combine definitions of "Associate" and "Licensed marriage and family therapist associate"; expand the definition of "Supervision"; and update and clarify statutory and rule references. As a result of the new definitions, the definitions are renumbered accordingly.

The following are proposed changes concerning Subchapter B. The Board.

Amendment to §801.11(e)(1)(C) removes the chair's obligation to sign approved meeting minutes.

Amendments to §801.13 replace "Department" with "HHSC" to reflect that the 84th Texas Legislature transferred the regulatory functions of the Department of State Health Service (department or DSHS) to the Health and Human Services Commission (HHSC) via Senate Bill 200. Effective September 1, 2017, HHSC provides personnel and facilities necessary for the administration of the board's functions. In addition, amendment to (g) removes the executive director's obligation to sign approved meeting minutes.

Amendments to §801.14 in subsection (b) replace "department" with "HHSC" to reflect changes made by the 84th Texas Legislature as noted above.

Amendments to §801.18 in subsection (a) remove the annual continuing education sponsor fee.

Amendments to §801.19 replace "department" with "staff" to reflect changes made by the 84th Texas Legislature as noted above.

The following are proposed changes concerning Subchapter C. Guidelines for Professional Therapeutic Services and Code of Ethics.

Amendments to §801.42 include reformatting and non-substantive changes.

Amendments to §801.43 include reformatting and non-substantive changes.

Amendments to §801.44 remove redundant subsections (m) and (x) and move subsection (n) to §801.48 Record Keeping, Confidentiality, Release of Records, and Required Reporting - see subsections (e) and (f); and remove redundant subsection (w), - see §801.47 Drug and Alcohol Use.

Amendments to §801.45 clarify in subsections (b) and (f) that the board may take action if a licensee engages in sexual misconduct with "a supervisee, an LMFT Associate, or an intern for whom the licensee has administrative or clinical responsibility" as well as "a student in a marriage and family therapy graduate program in which the licensee offers professional or educational services." Non-substantive changes were also made to this section.

Amendments to §801.46 include reformatting and non-substantive changes.

Amendments to §801.47 include reformatting and non-substantive changes.

Amendments to §801.48 reorganize the elements under subsection (d) related to required reporting and move provisions under (h) related to reporting of sexual misconduct so they are under (d)(5) related to duty to report sexual misconduct; align subsection (e) with HIPAA requirements of record retention for six years; and add subsection (f) related to exemptions from subsection (e), which was moved from §801.44 Relationships with Clients. Reformatting and non-substantive changes were also made to this section.

Amendments to §801.49 clarify in subsection (c) the required documentation to submit to the board within 30 days of the granting of an academic degree relevant to marriage and family therapy is an official transcript. Reformatting and non-substantive changes were also made to this section.

Amendments to §801.50 include reformatting and non-substantive changes.

Amendments to §801.51 include non-substantive changes.

Amendments to §801.52 include non-substantive changes.

Amendments to §801.53 include non-substantive changes.

Amendments to §801.54 include non-substantive changes.

Amendments to §801.55 include non-substantive changes.

Amendments to §801.56 include non-substantive changes.

Amendments to §801.57 clarify in subsection (d) prohibition that a licensee who has conducted a child custody evaluation may not provide any other type of service unless court-ordered to do so. Non-substantive changes were also made to this section.

Amendments to §801.58 clarify in subsection (d) required training or experience before a licensee may provide technology-assisted services and removed unnecessary language regarding a deadline for compliance in effect when the provision was introduced; repeal requirements that licensee disclose credentials and obtain client consent at the onset of each technology-assisted session; repeal subsection (j) concerning a compliance deadline imposed with this section was introduced. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter D. Application Procedures.

Amendments to §801.71 include non-substantive changes.

Amendments to §801.72 include non-substantive changes.

Amendments to §801.73 simplify subsection (a) by removing list of data required on application form and stating application form approved by the board; move provision that requires supervised experience form to new section §801.76 Licensed Marriage and Family Therapist (LMFT); add subsection (b) to require an applicant to submit appropriate fee(s); clarify requirements for official transcript in subsection (c); remove old effective date from subsection (e) and clarify requirements for jurisprudence exam. Non-substantive changes were also made to this section.

New §801.74 organizes and clarifies application and academic requirements for licensure examination.

New §801.75 organizes and clarifies qualifications, application and academic requirements for LMFT Associate license.

New §801.76 organizes and clarifies qualifications, application, academic, and supervised clinical experience requirements for LMFT license.

The following are proposed changes concerning Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure.

Amendments to §801.91 include non-substantive changes.

Amendments to §801.92 include non-substantive changes.

No changes were made to §801.93.

The following are proposed changes concerning Subchapter F. Academic Requirements for Examination and Licensure.

Amendments to §801.111 include non-substantive changes.

Amendments to §801.112 define the start of an academic program in subsection (a)(2) and move provision regarding remedy for graduate internship deficiency in subsection (a)(3) - see §801.114. Non-substantive changes were also made to this section.

Amendments to §801.113 define the start of an academic program in subsection (b)(3); organize provision regarding 45 or 60 semester hours under subsection (b); and redesignate subsections (c) and (d). Non-substantive changes were also made to this section.

Amendments to §801.114 clarify required semester hours in subsection (a); define the start of an academic program in subsection (b); clarify graduate internship hour requirements in subsection (b)(8); and add subsection (d) regarding remedy for graduate internship deficiency, which was moved from §801.112. Non-substantive changes were also made to this section.

Amendments to §801.115 in subsection (1) reduced requirement from five years to two years immediately preceding the date the application is received from an LMFT of another U.S. jurisdiction so the academic requirements (including the internship) are considered met; in subsection (2) reduced the threshold from five years to two years immediately preceding the date the application is received from an LMFT from a U.S. jurisdiction other than Texas that allows staff to grant one month of credit for every two months of independent practice toward a deficit in the academic internship requirement; and removed unnecessary and redundant subsection (3) - see §801.114. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter G. Experience Requirements for Licensure.

Amendments to §801.141 include non-substantive changes.

Amendments to §801.142 clarify supervised clinical experience requirement in subsection (1); clarify application of excess graduate internship hours in subsection (2); move a number of provisions regarding duties of the supervisor to §801.143; renumbered subsections (3) through (7); require the LMFT Associate to submit a Supervisory Agreement Form for each supervisor within 30 days of the date supervision began in subsection (5); and in subsection (7) reduced requirement from five years to two years immediately preceding the date the application is received from an LMFT of another U.S. jurisdiction so supervised clinical experience requirements are considered met. Non-substantive changes were also made to this section.

Amendments to §801.143 clarify requirements to apply for supervisor status in subsection (a); supervised clinical experience requirement in subsection (1); redesignate and reorganize subsections (b) through (n); in subsection (d), include supervisor's duties toward an LMFT Associate - moved from §801.142; in subsection (f) require a supervisor to report the end of supervision within 30 days; broadens supervisor's duty to ensure LMFT Associate knows and follows all statutes and rules that govern the practice of marriage and family therapy in subsection (g); in subsections (j) through (l), clarify consequences in the event that the supervisor fails to renew his or her license and supervisor status or the supervisor becomes subject to disciplinary action. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter H. Examinations.

The repeal of §801.172 is proposed because it no longer reflects current operational procedures. The requirement that the board offer the examination "at least semiannually" remains in Title 3 of the Texas Occupations Code, Sec. 502.155. However, the board's licensure examination vendor, the Association of Marital and Family Therapy Regulatory Boards (AMFTRB), offers the licensure examination more frequently than required by statute. The board also accepts verification of passing the California state licensing examination, which is also offered more frequently than twice per year.

The repeal of §801.173 is proposed because it no longer reflects current operational procedures. After staff has verified an applicant is eligible to sit for the AMFTRB licensure examination, staff sends a letter to the applicant with instructions to register with AMFRB. Application and academic requirements to take the licensure examination are in new §801.74.

Amendments to §801.174 in subsection (e) allow an applicant to retake the examination as many times as needed until the expiration of the application - one year from the date of the first unsuccessful examination (registration and scheduling limits set by the board's vendor still apply); redesignate subsections (f) through (h); in subsection (f) remove effective date and add reference to definition of jurisprudence exam in §801.2; clarify the jurisprudence exam must be completed no more than six months before the date the application is received in subsection (g); and remove redundant language in subsections (h) and (j) that has been moved to the definition of jurisprudence exam in §801.2. Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter I. Licensing.

Amendments to §801.201 add subsection (d) regarding the licensee's responsibility for use or misuse of original or duplicate license. Non-substantive changes were also made to this section.

Amendments to §801.202 remove redundant language regarding application requirements for the LMFT Associate - see new §801.75; redesignate subsections (a), (b), and (c); in subsection (c) an LMFT Associate who failed to meet all requirements by the end of 72 (or in some cases 96) months, may reapply for LMFT Associate, meeting all current requirements and passing the national licensure examination no more than six months before the date the application is received; and repeal provision for board review of clinical supervision experience accrued under a previously held LMFT Associate license. Non-substantive changes were also made to this section.

Amendments to §801.203 include non-substantive changes.

Amendments to §801.204 include non-substantive changes.

The following are proposed changes concerning Subchapter J, including changing the subchapter heading to License Renewal, Inactive Status, and Surrender of License.

Amendments to §801.232 include non-substantive changes.

Amendments to §801.233 include non-substantive changes.

Amendments to §801.234 include non-substantive changes.

Amendments to §801.235 include non-substantive changes.

Amendments to §801.236 implement recommendations of the Texas Sunset Commission to standardize conditions for inactive licensees and clarify how licensee may request inactive status and remove the limit of 24 months of inactive status in subsection (a); in subsection (b) a licensee cannot practice while the license is inactive; impose forfeiture of supervisory status with inactive status in subsection (c); inactive licenses remain subject to disciplinary action in subsection (d); in subsection (e) no continuing education is required while license is inactive; steps for converting from inactive to active status are set in subsection (f), including proof of jurisprudence exam no more than six months before the date request for status change is received and proof of completion of required continuing education for current renewal period; subsection (g) states neither continuing education nor fees will be prorated; and subsection (h) requires a licensee to reapply and meet all current requirements to regain supervisor status.

Amendments to §801.237 include non-substantive changes.

The following are proposed changes concerning Subchapter K. Continuing Education Requirements.

Amendments to §801.262 include non-substantive changes.

Amendments to §801.263 include non-substantive changes.

Amendments to §801.264 simplify the types of acceptable continuing education, requiring providers: to ensure the education is directly related to the practice of marriage and family therapy in subsection (1); to confirm presenters have the necessary experience and knowledge of the topic in subsection (2); to verify attendance and provide proof of completion in subsection (3); to collect participants' evaluation in subsection (4); and to maintain records at least three years in subsection (5). Some categories of acceptable continuing education are repealed and some are moved to §801.266 related to Determination of Clock Hour Credits and Credit Hours Granted. The limit of 12 hours by non-interactive study is repealed along with credit attending an ethics committee meeting. Credit for completing the jurisprudence exam is moved to §801.266.

The repeal of §801.265 regarding Continuing Education Sponsor is proposed to comport with changes proposed to §801.264.

Amendments to §801.266 credit continuing education activities on a one-for-one basis with one credit hour for each clock hour spent in the continuing education activity, except that in subsection (1) completion of the jurisprudence exam once per renewal period may count for one hour of the ethics requirement; credit for passing graduate coursework is removed and subsections are renumbered; hours spent providing clinical supervision may count for no more than one-half of the renewal period's continuing education requirement is subsection (2); in subsection (3) a presenter may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the renewal period's continuing education requirement and the same topic may not be used more than once biennially; an author of a book or peer reviewed article that enhances a licensee's marriage and family therapy knowledge or skill may claim credit not to exceed one-half of the renewal period's continuing education requirement.

The repeal of §801.267 regarding Determination of Clock Hour Credits is proposed to remove redundant language which is now proposed in §801.266.

Amendments to §801.268 include non-substantive changes.

The following are proposed changes concerning Subchapter L. Complaints and Violations.

Amendments to §801.291 include non-substantive changes.

Amendments to §801.292 include non-substantive changes.

Amendments to §801.293 include non-substantive changes.

Amendments to §801.294 include non-substantive changes.

No changes to §801.295.

Amendments to §801.296 simplify Complaint Procedures and implement recommendations made by the Texas Sunset Advisory Commission, employing appropriate penalty matrices in subsection (k); and allowing staff to dismiss baseless and non-jurisdictional complaints in subsection (l).

Amendments to §801.297 in subsections (c) and (d) conform to changes proposed in §801.296 (related to Complaint Procedures); in subsection (f) clarify that a licensee on probation must submit proof or required notification within 30 days of moving to another jurisdiction and within 30 days after the date the probationary order takes effect a licensee must submit proof of required notification to the principle(s) of each practice location; also in subsection (f) remove confusing language to clarify that a supervisor who becomes subject to a disciplinary order is no longer an approved supervisor per §801.143(l); reorganize provisions regarding board-ordered supervision under subsection (g) and provisions concerning release from probation in subsection (h); also in subsection (h) conform to changes proposed in §801.296 (related to Complaint Procedures). Non-substantive changes were also made to this section.

Amendments to §801.298 include non-substantive changes.

Amendments to §801.299 move language regarding administrative penalty from §801.302 to subsection (a); remove unnecessary provisions that repeat statute and redesignate subsections (b) through (d); and move provisions regarding severity level and sanction guide to §801.302 as referenced in subsection (d). Non-substantive changes were also made to this section.

Amendments to §801.300 include non-substantive changes.

No changes to §801.301.

Amendments to §801.302 incorporate language regarding administrative penalty amounts for each severity level from §801.299 to subsections (1) through (3); remove statement in subsection (1) regarding regaining licensure after revocation of license because it appears to conflict with Texas Occupations Code, Sec. 502.252(b)(8) related to qualifications for licensure. Non-substantive changes were also made to this section.

Amendments to §801.303 conform to changes proposed in §801.296 (related to Complaint Procedures). Non-substantive changes were also made to this section.

New §801.304 introduces reciprocal discipline: in subsection (a) Staff opens a complaint upon receipt of a report of disciplinary action imposed by another health licensing board in this state or any other jurisdiction; subsection (b) provides that the disciplinary action imposed is the action applicable to the same conduct or rule violation under board rules; and subsection (c) provides that a voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing board in this state or any other jurisdiction constitutes disciplinary action under this rule. Staff opens a complaint and the disciplinary action imposed is the disciplinary action applicable under board rules to the alleged conduct as if proved.

The following are proposed changes concerning Subchapter M. Licensing of Persons with Criminal Backgrounds.

Amendments to §801.331 include non-substantive changes.

Amendments to §801.332 include non-substantive changes.

The following are proposed changes concerning Subchapter N, including changing the subchapter heading to Informal Settlement Conference.

Amendments to §801.351 conform to changes proposed in §801.296 (related to Complaint Procedures); remove language regarding ethics committee's or executive director's discretion to hold a conference and redesignate subsections (b) through (q); reorganize and simplify provisions regarding notice of the informal settlement conference in subsection (c); also in subsection (c), incorporate language from §801.362 to eliminate redundancy; reorder subsections (e), (g), (i), (j), and (l) for more logical flow; and consolidate provisions regarding respondent's acceptance of rejection of settlement recommendations in subsection (o). Non-substantive changes were also made to this section.

The following are proposed changes concerning Subchapter O. Formal Hearings.

Amendments to §801.362 remove redundant language subsection (b) - see §801.351(c); and redesignate subsection (b). Non-substantive changes were also made to this section.

Amendments to §801.363 include non-substantive changes.

Amendments to §801.364 include non-substantive changes.

FISCAL NOTE

The board has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

The board has determined that during the first five years that these provisions will be in effect, the proposed rules neither create or nor eliminate a government program; implementation of the proposed rules requires neither the creation of new employee positions nor the elimination of existing employee positions; implementation of the proposed rules require neither an increase nor decrease in future legislative appropriations to the agency; the proposed rules require a decrease in fees paid to the agency; the proposed rules does not create a new rule; the proposed rules neither expand, limit, nor repeal an existing regulation; the proposed rules neither increase nor decrease the number of individuals subject to the rule's applicability; and the proposed rules neither positively nor adversely affect this state's economy.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

The board has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses, micro-businesses, and rural communities will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The proposal

will not affect a local economy. There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these proposed rules because these rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

In addition, the board has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is continued assurance of public health and safety through the effective licensing and regulation of marriage and family therapists. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the state and mental health care providers.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Board staff has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Sarah Faszholz, Interim Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to mft@hhsc.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. INTRODUCTION

22 TAC §801.2

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.2. Definitions.

The following words and terms when used in this chapter, [~~shall~~] have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Texas Higher Education Coordinating Board. [~~or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA).~~]

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act. [~~(relating to Marriage and Family Therapists).~~]

(3) Administrative law judge (ALJ)--An individual who presides at an administrative hearing held under Texas Government Code, Chapter 2001 (relating to Administrative Procedure), as defined in Texas Government Code, Chapter 2003 (relating to State Office of Administrative Hearings).

(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

[~~(5) Associate--A licensed marriage and family therapist associate. The appropriate board-approved terminology to use in reference to an Associate is: "Associate," "Licensed Marriage and Family Therapist Associate," or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and shall not be used.~~]

(5) [~~(6)~~] Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(6) [~~(7)~~] Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the board or unlicensed.

(7) [~~(8)~~] Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria [~~set out~~] in §801.73 of this title (relating to Required Application Materials).

(8) [~~(9)~~] Contested case--A proceeding in accordance with the APA and this chapter, including[~~, but not limited to,~~] rule enforcement and licensing[~~,~~] in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(9) Disciplinary action--A sanction imposed by board order, such as denial, reprimand, probated suspension, suspension, or revocation of a license or administrative penalty. A disciplinary action is posted on the board's website and reported to the National Practitioner Data Bank.

[~~(10) Department--The Department of State Health Services.~~]

(10) [~~(11)~~] Endorsement--The process whereby the board reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(11) [~~(12)~~] Family system [~~systems~~]--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) [~~(13)~~] Formal hearing--A hearing or proceeding in accordance with this chapter[~~, including a contested case as defined in this section~~] to address the issues of a contested case.

(13) [~~(14)~~] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or LMFT Associates [~~associates~~] in a clinical setting during the supervision hour. [~~A supervision hour is fifty minutes~~].

(14) HHSC--The Health and Human Services Commission.

(15) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates [~~associates~~] in a clinical setting during the supervision hour. [~~A supervision hour is fifty minutes.~~]

(16) Informal settlement conference--An informal disposition of a contested case held to determine whether the disputed matters can be resolved without further proceedings.

(17) [~~(16)~~] Investigator--A professional complaint investigator employed by the HHSC. [~~department.~~]

(18) Jurisprudence exam--An online learning experience based on the Act, board rules, and other state laws and rules relating to the practice of marriage and family therapy.

(19) [~~(17)~~] License--A marriage and family therapist license, a marriage and family therapist associate license, [~~or~~] a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(20) [~~(18)~~] Licensed marriage and family therapist (LMFT)--A qualified [~~An~~] individual licensed by the board [~~who offers~~] to provide marriage and family therapy for compensation.

[~~(19) Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.~~]

(21) [~~(20)~~] Licensed marriage and family therapist associate (LMFT Associate)--A qualified [~~An~~] individual licensed by the board [~~who offers~~] to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor. The appropriate board-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and may not be used.

(22) Licensee--Any person licensed by the board.

(23) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(24) [~~(21)~~] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(25) [~~(22)~~] Month--A calendar month.

(26) Open Meetings Act--Texas Government Code Chapter 551.

(27) [~~(23)~~] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the administrative law judge [~~Administrative Law Judge~~] (ALJ) as having an interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(28) [~~(24)~~] Person--An individual, corporation, partnership, or other legal entity.

(29) [~~(25)~~] Pleading--Any written allegation filed by a party concerning its claim or position.

(30) Public Information Act--Texas Government Code Chapter 552.

(31) [~~(26)~~] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of [~~their~~] regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized [~~ognizable~~] church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) [~~Title 26, Code of Federal Regulations 1.6033-2, subsection (h) (as in effect in 2008)~~] (relating to [~~(Internal Revenue)~~] Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(32) Respondent--A person alleged to have violated the act or Board rules.

(33) [~~(27)~~] Supervision--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(34) Supervision hour--50 minutes.

(35) [~~(28)~~] Supervisor--An LMFT with supervisor status [~~A person~~] meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate board-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations will [~~like "LMFT S" are not board-approved and shall~~] not be used.

(36) [~~(29)~~] Technology-assisted services--Providing therapy or supervision with [~~Services that use~~] technologies and devices for [~~that enable~~] electronic communication and information exchange [~~to provide therapy or supervision~~] between a licensee in one location and a client or supervisee in another location.

[(30) Texas Open Meetings Act--Government Code, Chapter 551.]

[(31) Texas Public Information Act--Government Code, Chapter 552.]

(37) [(32)] Therapist--A person who holds a license issued by the board. [Texas licensed marriage and family therapist or a Texas licensed marriage and family therapist associate.]

(38) [(33)] Waiver--The suspension of educational, professional, or [and/or] examination requirements for an applicant [applicants] who meets [meet] licensing requirements under special conditions.

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

Filed with the Office of the Secretary of State on December 3, 2018.

TRD-201805133
Jennifer Smothermon, MA, LPC, LMFT
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 776-6972

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SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.19

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.11. The Board.

(a) Membership. The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice of education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) Terms. Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) Vacancies. In the event of a vacancy, the governor will [shall] appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) Elections. At the meeting held nearest to August 31 of each year, the board will [shall] elect a vice-chair by a majority vote of the members present.

(e) Officers.

(1) Chair. The chair is [shall be] appointed by the governor and serves [will serve] at the will of the governor.

(A) The chair presides [shall preside] at all meetings [at which] he or she attends [is in attendance] and performs [shall perform] all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director will keep a record [shall keep a tabulation] of the minor procedural decisions and include them in the executive director's report to the board.

[(C) The chair shall sign the approved minutes of each meeting.]

(2) Vice-chair.

(A) The vice-chair performs [shall perform] the duties of the chair in the absence or disability of the chair.

(B) In the event of a vacancy, [Should the office of the chair become vacant,] the vice-chair will serve as chair [shall serve] until a successor is appointed. [named.]

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees will [appointed by the chair shall] consist of no more than four members and will [shall] make reports to the board at regular meetings. [The board shall direct all such reports to the executive director for distribution.] The chair will [board shall] appoint at least one public member to any [board] committee established to review a complaint [filed with the board] or [review an] enforcement action [against a license holder related to a complaint filed with the board].

(g) Compensation. No board member [of the board] may receive compensation for serving on the board. Each member is entitled to reimbursement of travel expenses for each day [that] the member performs board functions [as a member of the board].

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee will [shall] prepare and submit to each board member [of the board] an agenda which includes items required by law, items requested by members, and other matters of board business [which have been] approved by the chair.

(B) The official agenda of a board meeting will [shall] be filed with the [Texas] secretary of state as required by Texas Government Code, Chapter 551 (relating to Open Meetings). [the Texas Open Meetings Act.]

(C) Any individual wishing to be on the agenda to present a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda (not later than 30 days before [prior to] the scheduled date of the meeting) which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) Frequency of meetings. The board will [~~shall~~] meet at least biannually and may meet at other times as the chair deems necessary. All meetings will [~~shall~~] be conducted in accordance with Texas Government Code, Chapter 551 (relating to Open Meetings). [~~the Texas Open Meetings Act.~~]

(3) Attendance. It is grounds for removal from the board if [~~If~~] a member is absent from more than half of the regularly scheduled board meetings [~~that~~] the member is eligible to attend during the calendar year without an excuse approved[~~, unless the absence is excused~~] by majority vote of the board[~~, a potential ground for removal from the board may exist~~]. The chair will [~~shall~~] notify the governor [~~that~~] a potential ground for removal exists. The attendance records of the members will [~~may~~] be made available to the governor of the State of Texas and [~~and/or~~] the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official board decisions will be [~~decisions made by the board shall be~~] made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair or acting chair will make the decision.

(5) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board is [~~shall~~] not [~~be~~] bound in any way by any statement or action on the part of any board member, committee [~~subcommittee~~] member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

(j) Training. A person who is appointed to and qualifies for office as a board member [~~of the board~~] may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program meeting [~~that meets~~] the requirements established in Texas Government Code Chapter 551 (relating to Open Meetings). [~~the Act.~~]

§801.12. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to establish procedures for the submission, consideration, and disposition of a petition to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition must [~~shall~~] be in writing; [~~shall~~] state the petitioner's name, address, and telephone number; and [~~shall~~] contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the proposed rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition must [~~shall~~] be filed with the board office.

(4) The executive director or the executive director's designee may determine that the petition does not contain the information described in paragraph (2) of this subsection and return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director must [~~shall~~] submit a completed petition to the board for consideration.

(2) If the board denies the petition, the board must [~~shall~~] give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(3) If the board begins [~~initiates~~] rulemaking procedures, the version of the rule [~~which~~] the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. [~~All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section.~~] The board may refuse to consider a subsequent petition for the adoption of the same or similar rule submitted within six months after the date of an initial petition.

§801.13. Executive Director and HHSC [~~the Department~~].

(a) Following consultation with the board members, HHSC will appoint an [~~the department shall designate a department~~] employee as executive director for the board.

(b) The executive director[~~,~~] or the executive director's designee[~~,~~] keeps [~~shall keep~~] the minutes of the meetings and proceedings of the board and is [~~shall be~~] the custodian of the files and records of the board.

(c) HHSC exercises [~~The department shall exercise~~] general supervision over individuals employed in the administration of the Texas Occupations Code, Chapter 502 (relating to the Act) [~~Act~~].

(d) The executive director is [~~shall be~~] responsible for the preliminary information regarding complaints and for the presentation of [~~the formal~~] complaints to the board.

(e) The executive director or the executive director's designee processes [~~shall handle~~] all correspondence for the board and prepares [~~obtain, assemble, or prepare~~] reports and information [~~that~~] the board may modify or authorize.

(f) The executive director or the executive director's designee is responsible for [~~shall have the responsibility of~~] assembling and reviewing application materials [~~submitted by applicants for licensure~~]. Determinations made by the executive director or the executive director's designee are subject to [~~the~~] approval or [~~and/or~~] modification by [~~of~~] the board, which makes [~~shall make~~] the final decision regarding [~~the~~] applicant eligibility [~~of the applicants~~].

[~~(g) The executive director shall sign the approved minutes of each meeting.~~]

§801.14. Official Records.

(a) All official records of the board, except those records containing information considered confidential under the provisions of Texas Government Code, Chapter 552 (relating to Public Information) and the Act are [~~the Texas Public Information Act, shall be~~] open for public inspection during regular office hours.

(b) Official records will [~~shall~~] not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the General Services Commission and HHSC [~~the department~~].

§801.15. Impartiality and Nondiscrimination.

(a) The board will [~~shall~~] make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or board-approved supervisor status or in a disciplinary action against a licensee must [~~shall so~~] declare this to the board and [~~shall~~] not participate in any board proceedings involving that applicant or licensee.

§801.16. Policy on Disability Accommodations.

The board complies with the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.)* in the delivery of its services to applicants and licensees. A person who needs reasonable accommodations in order to access board services must [~~shall~~] request accommodations in writing and may be required to provide verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

§801.17. License Certificate.

(a) The board will [~~shall prepare and~~] provide [~~to~~] each licensee [~~Licensed Marriage and Family Therapist and Licensed Marriage and Family Therapist Associate~~] a license certificate and a renewal card which contains the licensee's name and license number.

(b) Any license certificate or renewal card issued by the board remains the board's property and must be surrendered to the board upon demand.

§801.18. Fees.

~~[(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).]~~

(a) [~~(b)~~] The schedule of fees is [~~shall be~~] as follows:

(1) application fee--$40;

(2) licensure examination fee--is [~~shall be~~] in accordance with the current contracted examination fee;

(3) initial licensure fee issued for a two-year term--$90;

(4) biennial renewal fee--$130;

(5) late renewal fees [~~fee--late renewal fees shall be set as follows~~]:

(A) on or before 90 days after the expiration date [~~within 90 days~~]--biennial renewal fee plus $33 [~~one-fourth of the current biennial renewal fee ($33)~~]; and

(B) more [~~longer~~] than 90 days but less than one year after the expiration date--biennial renewal fee plus $65 [~~one-half of the current biennial renewal fee ($65)~~];

(6) inactive status (administrative) fee--$75;

(7) duplicate license fee--$10;

(8) provisional licensure fee--$40;

~~[(9) continuing education sponsor fee--$50 annually;]~~

(9) [~~(10)~~] child support reinstatement fee--$40;

(10) [~~(11)~~] verification fee--$10;

(11) [~~(12)~~] student loan default reinstatement fee--$40;

(12) [~~(13)~~] criminal history evaluation letter fee--$50;

(13) [~~(14)~~] application fee for board approved supervisor status--$20; and

(14) [~~(15)~~] biennial renewal fee for board-approved supervisor status--$50 [~~biennially~~].

(b) [~~(c)~~] All fees are nonrefundable.

(c) [~~(d)~~] For all applications and renewals [~~renewal applications~~], the board is required [~~authorized~~] to collect subscription and convenience fees to recover costs associated with application and renewal [~~application~~] processing through www.texas.gov. [~~For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council).~~]

(d) For all applications and renewals, the board is required to collect fees to fund the Office of Patient Protection in accordance with Texas Occupations Code, §101.307 (relating to Health Professions Council).

(e) The board will [~~shall~~] make periodic reviews of its fee schedule to ensure [~~and make any adjustments necessary to provide~~] funds [~~to~~] meet its expenses without creating an unnecessary surplus. All fee changes will [~~shall~~] be made through rulemaking procedures.

§801.19. Request for Criminal History Evaluation Letter.

(a) In accordance with [~~the~~] Texas Occupations Code, §53.102 (relating to Request for Criminal History Evaluation Letter), a person may request staff [~~the department~~] to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe [~~that~~] the person is ineligible for the license due to a conviction or deferred adjudication [~~for a felony or misdemeanor offense~~].

(b) A person making a request for issuance of a criminal history evaluation letter must [~~shall~~] submit the request on a form prescribed by staff, [~~the department, accompanied by~~] the criminal history evaluation letter fee, and the required supporting documentation[~~,~~] as described on the form. The request must [~~shall~~] state the basis for the person's potential ineligibility.

(c) Staff have [~~The department has~~] the same authority to investigate a request submitted under this section and the requestor's eligibility that staff have [~~the department has~~] to investigate a person applying for a license.

(d) If staff determine [~~the department determines that~~] a ground for ineligibility does not exist, staff will [~~the department shall~~] notify the requestor in writing of the determination[~~. The notice shall be issued~~] not later than the 90th day after the date staff [~~the department~~] received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If staff determine [~~the department determines that~~] the requestor is ineligible for a license, staff will [~~the department shall~~] issue a letter setting out each basis for potential ineligibility and staff's [~~the department's~~] determination as to eligibility. The letter will [~~shall~~] be issued not later than the 90th day after the date staff [~~the department~~] received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of [~~new~~] evidence known to, but not disclosed by, the requestor

or not reasonably available to staff [the department] at the time the letter is issued, staff's [the department's] ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 776-6972

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SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.42 - 801.58

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by an LMFT or LMFT Associate [a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate].

(1) Marriage and couples therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.

(2) Sex therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders, except treatment for sex offenses. Sex offender treatment as defined by Texas Occupations Code, Chapter 110, and Chapter 810 of this title (relating to Council on Sex Offender Treatment), is not included under Sex Therapy. An individual seeking treatment for a sexual offense must [shall] be referred for services to [from] those licensed by the Council on Sex Offender Treatment.

(3) Family therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.

(4) Child therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.

(5) Play therapy using [which utilizes] systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.

(6) Individual psychotherapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.

(7) Divorce therapy using [which utilizes] systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.

(8) Mediation using [which utilizes] systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. A court appointed mediation requires a specialized training period.

(9) Group therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.

(10) Chemical dependency therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.

(11) Rehabilitation therapy using [which utilizes] systems methods and processes which include interpersonal, cognitive, cogni-

tive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.

(12) Referral services using [~~which utilizes~~] systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.

(13) Diagnostic assessment using [~~which utilizes~~] the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.

(14) Psychotherapy using [~~which utilizes~~] systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.

(15) Hypnotherapy using [~~which utilizes~~] systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.

(16) Biofeedback using [~~which utilizes~~] systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.

(17) Assessment and appraisal using [~~which utilizes~~] systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.

(18) Consultation using [~~which utilizes~~] systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

(19) Activities under the Texas Family Code, Chapter 153, Subchapter K, concerning Parenting Plan, Parenting Coordinator, and Parenting Facilitator. [~~pertaining to parenting plan and parenting facilitator.~~]

(20) Parent education and parent training including advice, counseling, or instructions to parents or children.

(21) Life coaching and any related techniques or modalities.

(22) Any other related services provided by a licensee.

§801.43. Professional Representation.

(a) When providing professional therapeutic services[~~,~~] as defined in §801.42 of this title (relating to Professional Therapeutic Services), a licensee must [~~shall~~] indicate his or her licensure status as an LMFT or LMFT Associate [~~a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate~~], including any probationary status or other restrictions placed on the licensee by the board.

(b) A licensee must [~~shall~~] not make any false, misleading, deceptive, fraudulent or exaggerated claim or [~~misleading claim or~~] statement about the licensee's services, including: [~~but not limited to:~~]

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or

(3) the practice of marriage and family therapy.

(c) A licensee must [~~shall~~] not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(d) A licensee must [~~shall~~] not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(e) A licensee must [~~shall~~] make reasonable efforts to prevent others whom the licensee does not control from making misrepresentations[~~;~~] exaggerated[~~,~~] [~~or false claims; or~~] false, deceptive, or fraudulent claims or statements about the licensee's practice, services, qualifications, associations, or activities. If a licensee learns of a misrepresentation[~~;~~] exaggerated[~~,~~] [~~or false claim; or~~] false, deceptive, or fraudulent claim or statement made by another, the licensee must [~~shall~~] take immediate and reasonable action to correct the misrepresentation, claim or statement.

§801.44. Relationships with Clients.

(a) A licensee must [~~shall~~] provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must [~~shall~~] make known in writing to a prospective client the important aspects of the professional relationship, including [~~but not limited to,~~] the licensee's status as an LMFT or LMFT Associate, [~~a Licensed Marriage and Family Therapist, including~~] any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must [~~shall~~] obtain an appropriate consent for treatment before providing professional services. A licensee must [~~shall~~] make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before [~~Prior to~~] the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must [~~shall~~] obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must [~~shall~~] maintain these documents in the client's record. When federal or state statutes provide an exemption to secure consent of a parent or guardian before [~~prior to~~] providing services to a minor, a licensee must [~~shall~~] follow the protocol set forth in such federal or state statutes.

(d) A licensee must [~~shall~~] make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may [~~shall~~] be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must[~~;~~

~~shall~~] comply with the requirements in Texas Health and Safety Code, §164.006 (relating to Soliciting and Contracting with Certain Referral Sources). Compliance with Texas Health and Safety Code, Chapter 164 (relating to Treatment Facilities Marketing and Admission Practices) is [~~shall~~] not [~~be~~] considered [~~as~~] a violation of state law regarding illegal remuneration.

(f) A licensee must [~~shall~~] not exploit the licensee's [~~his/her~~] position of trust with a client or former client.

(g) A licensee must [~~shall~~] not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee must [~~shall~~] not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must [~~shall~~] set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines [~~that~~] there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee must [~~shall~~] take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must [~~shall~~] make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun [~~initiated~~] by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. A licensee must [~~It is the responsibility of the licensee to~~] ensure the welfare of the client if a non-therapeutic relationship arises.

[~~(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.~~]

[~~(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.~~]

(m) [~~(o)~~] A licensee may not [~~shall~~] bill clients or third parties for [~~only those~~] services not actually rendered or as agreed to in writing.

(n) [~~(p)~~] A licensee must end [~~shall terminate~~] a professional relationship when it is reasonably clear [~~that~~] the client is not benefiting from it. Upon ending a professional relationship, [~~termination,~~] if the client still requires mental health services, the licensee must [~~shall~~] make reasonable efforts to provide a written referral to clients for [~~in writing to refer the client to~~] appropriate services and to facilitate the transfer to appropriate care.

(o) [~~(q)~~] A licensee who engages in technology-assisted services must provide the client with the licensee's license number and information on how to contact the board by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) [~~(r)~~] A licensee may not [~~shall~~] offer [~~only those~~] services that are beyond the licensee's[~~within his or her~~] professional competency, and the services provided must [~~shall~~] be within accepted professional standards of practice and appropriate to the needs of the client.

(q) [~~(s)~~] A licensee must [~~shall~~] base all services on an assessment, evaluation, or diagnosis of the client.

(r) [~~(t)~~] A licensee must [~~shall~~] evaluate a client's progress on a continuing basis to guide service delivery and must [~~shall~~] make use of supervision and consultation as indicated by the client's needs.

(s) [~~(u)~~] A licensee may [~~shall~~] not promote or encourage the illegal use of alcohol or drugs by a client [~~clients~~].

(t) [~~(v)~~] A licensee must [~~shall~~] not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must [~~shall~~] take immediate and reasonable action to inform the other mental health services provider.

[~~(w) A licensee shall refrain from providing services while impaired by medication, drugs, or alcohol.~~]

[~~(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.~~]

(u) [~~(y)~~] A licensee may [~~shall~~] not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must [~~shall~~] report to the board knowledge of any unlicensed practice.

(v) [~~(z)~~] A licensee may [~~shall~~] not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

§801.45. Sexual Misconduct.

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

(1) Mental health services--The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider--A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of the Act.

(3) Sexual contact--

(A) deviate sexual intercourse as defined by Texas Penal Code, §21.01;

(B) sexual contact as defined by Texas Penal Code, §21.01;

(C) sexual intercourse as defined by Texas Penal Code, §21.01;

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(4) Sexual exploitation--A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice.

(5) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

(b) A licensee may [~~shall~~] not engage in sexual contact with a person who is:

(1) a client or a former client;

(2) a supervisee, an LMFT Associate, [~~an associate~~] or an intern for whom the licensee has administrative or clinical responsibility;

(3) a student [~~an intern~~] in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(4) a clinical supervisor or supervisee of the licensee.

(c) A licensee may [~~shall~~] not provide therapeutic services to a person with whom the licensee has had a sexual relationship.

(d) A licensee may [~~shall~~] not practice therapeutic deception or sexual exploitation.

(e) It is not a defense under subsections (b) - (d) of this section[~~,~~] if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(f) The following, when done in the context of professional services, is [~~shall be~~] considered [~~to be~~] sexual exploitation.

(1) Sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context.

(2) Any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual.

(3) Inappropriate sexual comments about or to a person, including making sexual comments about a person's body.

(4) Making sexually demeaning comments to or about an individual's sexual orientation.

(5) Making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment.

(6) Requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(7) Initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual.

(8) Kissing or fondling.

(9) Making a request for non-professional social contact.

(10) Any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature.

(11) Any intentional exposure of genitals, anus, or breasts.

(12) Encouraging a client, student, supervisee, intern, LMFT Associate [~~associate~~], or former client to masturbate in the presence of the licensee.

(13) Masturbation by the licensee when a client, student, supervisee, intern, LMFT Associate, [~~associate,~~] or former client is present.

(g) Examples of sexual contact includes [~~shall include~~] those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

(a) A licensee must [~~shall~~] make known to clients the purposes and explicit use of any testing done as part of a professional relationship.

(b) A licensee may [~~shall~~] not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A licensee may [~~shall~~] not administer and interpret any test without the appropriate training and experience to administer and interpret the test.

(d) A licensee must observe the necessary precautions to maintain the security of any test administered by the licensee or under the licensee's supervision.

§801.47. Drug and Alcohol Use.

A licensee may [~~shall~~] not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services; or

(2) use any kind of illegal drugs.

§801.48. Record Keeping, Confidentiality, [~~and~~] Release of Records, and Required Reporting.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice.

(b) A licensee may [~~shall~~] not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, Chapter 611 (relating to Mental Health Records), or other state or federal statutes or rules.

(c) A licensee must [~~shall~~] comply with Texas Health and Safety Code, Chapters 181 (relating to Medical Records Privacy) and 611 (relating to Mental Health Records), and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee must [~~shall~~] report or release information as required by the following statutes:

(1) Texas Family Code, Chapter 261 (relating to Investigation of Report of Child Abuse or Neglect);

(2) Texas Human Resources Code, Chapter 48 (relating to Investigations and Protective Services [~~Service~~] for Elderly Persons and Persons with Disabilities);

(3) Texas Health and Safety Code, Chapter 161, Subchapter L (relating to Abuse, Neglect, and Unprofessional or Unethical Conduct in Healthcare Facilities); and

(4) Texas Civil Practice and Remedies Code, §81.006 (relating to Duty to Report Sexual Exploitation by a Mental Health Services Provider).[~~; and~~]

[~~(5) Occupations Code, Chapter 109 (relating to Release of Sex Offender Treatment Information)~~]

(e) A licensee must [~~shall~~] keep accurate records of therapeutic services, including [~~to include, but not be limited to,~~] dates of services, types of services, progress or case notes and billing information for a minimum of six [~~5~~] years for an adult client and five [~~5~~] years beyond the age of 18 for a minor, whichever comes last.

(f) Records created by a licensee during the scope of the licensee's employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (e) of this section.

(g) [~~(f)~~] A licensee must [~~shall~~] retain and dispose of client records in such a way that confidentiality is maintained.

(h) [~~(g)~~] In independent practice, the licensee must establish a plan for the custody and control of the licensee's client mental health records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services.

[~~(h) A licensee shall report sexual misconduct as follows.~~]

[~~(1) In addition to the requirements under subsection (d) of this section, if a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider (during therapy or any other course of treatment), the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:~~]

[~~(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;~~]

[~~(B) the board if the misconduct involves a licensee; and~~]

[~~(C) any other state licensing agency which licenses the mental health services provider.~~]

[~~(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.~~]

[~~(3) A report under this subsection need contain only the information needed to:~~]

[~~(A) identify the reporter;~~]

[~~(B) identify the alleged victim, unless the alleged victim has requested anonymity;~~]

[~~(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and~~]

[~~(D) provide the name of the alleged perpetrator.~~]

§801.49. Licensees and the Board.

(a) Any person licensed by the board is bound by the provisions of the Act and this chapter.

(b) A licensee must [~~shall~~] report alleged misrepresentations or violations of this chapter to the board.

(c) The licensee must submit a written and signed [~~shall~~] report of name changes, any changes in home or business[~~,~~] address or phone number, employment setting, or other relevant changes to the board [~~in writing and signed~~] within 30 days of the change.

(d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(e) The failure of a licensee to timely respond to a request from the board or staff for information or other correspondence is unprofessional conduct and grounds for disciplinary proceedings.

(f) A licensee must [~~shall~~] provide an official transcript [~~documentation~~] to the board within 30 days of the granting of an academic degree relevant to the practice of marriage and family therapy.

(g) A licensee must [~~shall~~] make a written report [~~reports~~] to the board office within 30 days of the following situations:

(1) the licensee's arrest, deferred adjudication, or criminal conviction, other than for a Class C misdemeanor traffic offense;

(2) the filing of a criminal case against the licensee;

(3) the settlement of a judgment rendered in a civil lawsuit filed against the licensee and related to the licensee's marriage and family therapy practice; or

(4) complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certification body.

(h) Failure to make a report as required by this section is grounds for disciplinary action by the board.

§801.50. Corporation and Business Names.

(a) An individual practice by a licensee may be incorporated in accordance with Texas Business Organizations Code, Chapter 301 (relating to Provisions Relating to Professional Entities) or other applicable law.

(b) When an assumed name is used in any practice of therapy, the name of the licensee must be listed in conjunction with the assumed name. An assumed name used by a licensee may [~~must~~] not be false, deceptive, or misleading.

§801.51. Consumer Complaint Information.

(a) At a minimum, a licensee must [~~shall~~] inform each client of the name, address, and telephone number of the board for the purpose of directing complaints to the board:

(1) on each registration form, application, or written contract for services;

(2) on a sign prominently displayed in the place of business; or

(3) in a bill for therapy services provided to a client or third party.

(b) The board will provide [~~shall prepare information of~~] consumer information [~~interest that describes the regulatory functions of the board~~] and board procedures for handling and resolving complaints on its website.

(c) The board will [~~shall~~] make consumer information available to the public and appropriate state agencies.

§801.52. Display of License Certificate.

(a) A licensee must [~~shall~~] display an original or true and accurate copy of an original, board-issued license certificate and renewal card in a prominent place in all locations of practice.

(b) A licensee may [~~shall~~] not make any alteration on a license certificate or annual renewal card issued by the board.

(c) A licensee may [~~shall~~] not display a license certificate or renewal card issued by the board that is altered, expired, suspended, or revoked.

(d) A licensee who elects to copy a board-issued license certificate or certificate card is responsible for the use or misuse of the reproduced license.

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services may [~~shall~~] not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes[~~, but is not limited to,~~] any announcement of services, letterhead, business cards, commercial products, and billing statements. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) The board imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must [~~person licensed by the board~~] shall clearly state his or her license [~~the licensee's licensure~~] status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may [~~shall~~] not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must [~~shall~~] indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

§801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject throughout a project and must [~~shall~~] take reasonable precautions so [~~that~~] the human subject suffers [~~shall suffer~~] no injurious emotional, physical, or social effect.

(b) A licensee must [~~shall~~] disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

(c) When conducting and reporting research, a licensee must give recognition to previous work on the topic as well as observe all [~~the~~] copyright laws.

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the licensee's research or publication.

§801.55. Parenting Coordination.

(a) In accordance with the Texas Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Texas Family Code, §153.606, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) is not appointed under another statute or a rule of civil procedure.

(b) A licensee who serves as a parenting coordinator is not acting under the authority of a license issued by the board, and is not

engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parenting coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Texas Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Texas Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee must [~~shall~~] not provide marriage and family therapy services to any person while simultaneously providing parenting coordination services. The foregoing rule does [~~shall~~] not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Texas Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Texas Family Code, §153.6061, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) is not appointed under another statute or a rule of civil procedure.

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting facilitators must [~~shall~~] comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees must [~~shall~~] also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with the Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator may [~~shall~~] not provide other marriage and family therapy services to any person while simultaneously providing parenting facilitation services. The foregoing rule does [~~shall~~] not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with the Texas Family Code, §153.6101(b)(1), an LMFT Associate may not [~~a licensed marriage and family therapist associate shall not~~] serve as a parenting facilitator.

(f) A licensee serving as a parenting facilitator uses [~~utilizes~~] child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Texas Family Code, Chapter 153.

(g) A licensee serving as a parenting facilitator must [~~shall~~] assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) A licensee serving as a parenting facilitator functions in four primary areas in providing services.

(1) Conflict management function. The primary role of the parenting facilitator is to assist the parties to work out disagreements regarding the children to minimize conflict. To assist the parents in reducing conflict, the parenting facilitator may monitor the electronic or written exchanges of parent communications and suggest productive forms of communication that limit conflict between the parents.

(2) Assessment function. A parenting facilitator must [~~shall~~] review applicable court orders, including protective orders, social studies, and other relevant records to analyze the impasses and issues as brought forth by the parties.

(3) Educational function. A parenting facilitator must [~~shall~~] educate the parties about child development, divorce, the impact of parental behavior on children, parenting skills, and communication and conflict resolution skills.

(4) Coordination/case management function. A parenting facilitator must [~~shall~~] work with the professionals and systems involved with the family (for example, mental health, health care, social services, education, or legal) as well as with extended family, stepparents, and significant others as necessary.

(i) A licensee serving as a parenting facilitator must [~~shall~~] be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting facilitator must [~~shall~~] adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur may not be stated or implied. [~~can be neither stated nor implied.~~]

(j) In order to protect the parties and children in domestic violence cases involving power, control and coercion, a parenting facilitator must [~~shall~~] tailor the techniques used [~~so as~~] to avoid offering the opportunity for further coercion.

(k) A licensee serving as a parenting facilitator must [~~shall~~] be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) A licensee serving as a parenting facilitator may [~~shall~~] not provide legal advice.

(m) A licensee serving as a parenting facilitator must [~~shall~~] serve by written agreement of the parties and/or formal order of the court.

(n) A licensee serving as a parenting facilitator may [~~shall~~] not begin to provide [~~initiate providing~~] services until the licensee has received and reviewed the fully executed and filed court order or the signed agreement of the parties.

(o) A licensee serving as a parenting facilitator must [~~shall~~] maintain impartiality in the process of parenting facilitation. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(p) A licensee serving as a parenting facilitator:

(1) must end [~~shall terminate~~] or withdraw services if the licensee determines the licensee cannot act in an impartial or objective manner;

(2) may [~~shall~~] not give or accept a gift, favor, loan or other item of value from any party having an interest in the parenting facilitation process;

(3) may [~~shall~~] not coerce or improperly influence any party to make a decision;

(4) may [~~shall~~] not intentionally or knowingly misrepresent or omit any material fact, law, or circumstance in the parenting facilitator process; and

(5) may [~~shall~~] not accept any engagement, provide any service, or perform any act outside the role of parenting facilitation that would compromise the facilitator's integrity or impartiality in the parenting facilitation process.

(q) A licensee serving as a parenting facilitator may make referrals to other professionals to work with the family, but must [~~shall~~] avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or similar remuneration may [~~shall~~] be given or received by a licensee for parenting facilitation or other professional referrals.

(r) A licensee serving as a parenting facilitator should attempt to bring about resolution of issues by agreement of the parties; however, the parenting facilitator is not acting in a formal mediation role. An effort towards resolving an issue, which may include therapeutic, mediation, education, and negotiation skills, does not disqualify a licensee from making recommendations regarding any issue that remains unresolved after efforts of facilitation.

(s) A licensee serving as a parenting facilitator must [~~shall~~] communicate with all parties, attorneys, children, and the court in a manner which preserves the integrity of the parenting facilitation process and considers the safety of the parents and children.

(t) A licensee serving as a parenting facilitator:

(1) may meet individually or jointly with the parties, as deemed appropriate by the parenting facilitator, and may interview the children;

(2) may interview any individual who provides [~~individuals who provide~~] services to the children to assess the children's needs and wishes; and

(3) may communicate with the parties through face-to-face meetings or electronic communication.

(u) A licensee serving as a parenting facilitator must, before [~~shall, prior to~~] the beginning of the parenting facilitation process and in writing, inform the parties of:

(1) the limitations on confidentiality in the parenting facilitation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(v) Information obtained during the parenting facilitation process may [~~shall~~] not be shared outside the parenting facilitation process except for professional purposes, as provided by court order, by written agreement of the parties, or as directed by the board.

(w) In the initial session with each party, a licensee serving as a parenting facilitator must [~~shall~~] review the nature of the parenting facilitator's role with the parents to ensure that they understand the parenting facilitation process.

(x) A licensee serving as a parenting facilitator:

(1) must [~~shall~~] comply with all mandatory reporting requirements, including but not limited to Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) must [~~shall~~] report to law enforcement or other authorities if they have reason to believe that any participant appears to be at serious risk to harm themselves or a third party;

(3) must [~~shall~~] maintain records necessary to support charges for services and expenses, and must [~~shall~~] make a detailed accounting of those charges to the parties and their counsel, if requested to do so;

(4) must [~~shall~~] maintain notes regarding all communications with the parties, the children, and other persons with whom they speak about the case; and

(5) must [~~shall~~] maintain records in a manner that is professional, legible, comprehensive, and inclusive of information and documents that relate to the parenting facilitation process and that support any recommendations made by the licensee.

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §801.48(e) of this title (relating to Record Keeping, Confidentiality, [~~and~~] Release of Records, and Required Reporting), or as otherwise directed by the court.

(z) Records of a licensee serving as a parenting facilitator must [~~shall~~] be released on the request of either parent, as directed by the court, or as directed by the board.

(aa) Charges for parenting facilitation services must [~~shall~~] be based upon the actual time expended by the parenting facilitator, or as directed by the written agreement of the parties, and/or formal order of the court.

(bb) All fees and costs must [~~shall~~] be appropriately divided between the parties as directed by the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(cc) Fees may be disproportionately divided fees if one parent is disproportionately creating a need for services and if such a division is outlined in the court order of appointment and/or as noted in the parenting facilitators' written fee disclosure to the parties.

(dd) Services and activities for which a licensee serving as a parenting facilitator may charge include time spent interviewing parents, children and collateral sources of information; preparation of agreements, correspondence, and reports; review of records and correspondence; telephone and electronic communication; travel; court preparation; and appearances at hearings, depositions and meetings.

(ee) The minimum training for a licensee serving as a parenting facilitator that is required by the Texas Family Code, §153.6101(b), and is determined by the court is:

(1) eight hours of family violence dynamics training provided by a family violence service provider;

(2) Forty (40) [~~40~~] classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court;

(3) Twenty-four (24) [~~24~~] classroom hours of training in the fields of family dynamics, child development, family law; and

(4) Sixteen (16) [~~16~~] hours of training in the laws and board rules governing parenting coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parenting facilitator:

(1) must [~~shall~~] complete minimum training as required by the Texas Family Code, §153.6101, as determined by the appointing court;

(2) must [~~shall~~] have extensive practical experience with high conflict or litigating parents;

(3) must [~~shall~~] complete and document upon request advanced training in family dynamics, child maltreatment, co-parenting, and high conflict separation and divorce; and

(4) must [~~shall~~] regularly complete continuing education related to co-parenting issues, high-conflict families and the parenting coordination and facilitation process.

(gg) A licensee serving as a parenting facilitator must [~~shall~~] decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(hh) Since parenting facilitation services are addressed under multiple titles in different jurisdictions nationally, acceptability of training to meet the requirements of subsection (cc) of this section is based on functional skills taught during the training rather than the use of specific titles or names.

§801.57. Child Custody Evaluations.

(a) Licensees must [~~shall~~] comply with all applicable statutes and rules, including but not limited to Texas Family Code, Chapter 107, Subchapters D, E, and F (relating to Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions).

(b) When a licensee who has conducted a court-ordered child custody evaluation or adoption evaluation receives any complaint relating to the outcome of the evaluation, the licensee must report the complaint to the court that ordered the evaluation. The board reviews only complaints regarding forensic evaluations that allegedly violated specific board rules.

(c) Disclosure of confidential information in violation of Texas Family Code, §107.111 (relating to Child Custody Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) or §107.163 (Adoption Evaluator Access to Investigative Records of Department of Family and Protective Services; Offense) is grounds for disciplinary action, up to and including license revocation.

(d) A licensee may not provide [~~therapy and~~] any other type of service, neither sequentially nor simultaneously [~~including but not limited to a child custody evaluation or parenting facilitation,~~] in the same case he or she provides a child custody evaluation unless required by court order. [~~, whether such services are delivered sequentially or simultaneously.~~]

(e) A licensee may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child in accordance with Texas Family Code, Chapter 107, Subchapter D.

(f) Before beginning child custody evaluations or adoption evaluations, a licensee must [~~shall~~] inform the parties in writing of:

(1) the limitations on confidentiality in the evaluation process; and

(2) the basis of fees and costs and the method of payment, including any fees associated with postponement, cancellation, and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(g) An LMFT Associate may [~~A Licensed Marriage and Family Therapist Associate shall~~] not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services or otherwise allowed by law.

§801.58. Technology-Assisted Services.

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas must [~~shall~~] comply with the laws and rules of this board and of the out-of-state regulatory authority.

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services must [~~shall~~] meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with Texas Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter).

(d) Before providing technology-assisted services, a licensee must receive [~~Licensees may use technology-assisted services only after receiving~~] appropriate education, training, or [~~and/or~~] supervised experience in using relevant technology. A therapist who uses technology-assisted services must maintain documentation of academic preparation and supervision in the use of technology-assisted services as part of the therapist's academic program or the substantial equivalent provided through at least 15 hours of continuing education and 2 hours every subsequent renewal period. [~~Licensees must comply with this subsection by January 1, 2018.~~]

(e) A licensee may [~~shall~~] not render therapy using technology-assisted services without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible; and

(2) disclosing the identity and applicable credentials of the licensee; and

(3) obtaining appropriate consents from clients.

(f) Before providing technology-assisted services, a licensee must [~~licensees shall~~] determine whether a client is a minor. Upon determining [~~that~~] a client is a minor, and before providing technology-assisted services, a licensee must [~~licensees shall~~] obtain required consent from a parent or guardian and must [~~shall~~] verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

(g) The licensee must [~~shall~~] determine if technology-assisted service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

(h) Informed consent must [~~shall~~] include, at a minimum, information that defines electronic service delivery as practiced by the licensee and the potential risks and ethical considerations. The licensee must [~~shall~~] obtain and maintain written and/or electronic evidence documenting appropriate client informed consent for the use of technology-assisted services. The licensee must [~~shall~~] ensure that the in-

formed consent complies with other informed consent requirements in this chapter and must [shall] include the following:

(1) identification of the client, the therapist, and the therapist's credentials;

(2) list of services provided by the licensee using technology-assisted services;

(3) client agreement that the therapist determines on an on-going basis whether the condition being assessed or [and/or] treated is appropriate for technology-assisted services;

(4) details on security measures taken with the use of technology-assisted services, as well as potential risks to privacy notwithstanding such measures;

(5) information regarding secure protocols and back-up plans in case of technical failure;

(6) the licensee's credentials or training to engage in technology-assisted services, physical location of practice, and contact information;

(7) risks and benefits of engaging in the use of technology;

(8) emergency procedures to follow when the therapist is not available;

(9) information collected and any passive tracking mechanisms used;

(10) third-party websites or services used by the licensee to facilitate technology-assisted services; and

(11) an explanation of how records are maintained electronically, including[, but not limited to,] encryption type and record security, and the archival storage period for transaction records.

(i) Therapists who use technology-assisted services must [shall] meet or exceed applicable federal and state legal requirements of health information privacy, including[, but not limited to,] compliance with the Health Insurance Portability and Accountability Act of 1996 [1966] (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Texas Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

[(j) Licensees must comply with this section by January 1, 2018.]

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.76

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.71. Purpose of Application Procedures.

The purpose of this subchapter is to set out the application procedures for examination and licensure as an LMFT and LMFT Associate [a marriage and family therapist or marriage and family therapist associate].

§801.72. General Application Procedures.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(b) The board does [will] not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) An applicant [application] must complete the application process, satisfying any deficiencies [be completed] within one year of the original date of filing. An application [that is] not completed one year past the date an application is opened is void.

§801.73. Required Application Materials.

An applicant must submit:

(1) [(a)] an application [Application] form approved by the board;[. The application form shall contain:]

[(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, disciplinary actions taken by other jurisdictions, felony or misdemeanor convictions, educational background including direct clinical experience, supervised experience, and references;]

[(2) a statement that the applicant has read the Act and the board rules and agrees to abide by the Act and the board rules;]

[(3) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;]

[(4) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;]

[(5) a statement that the applicant understands that the fees submitted in the licensure process are nonrefundable;]

[(6) the applicant's signature and date of signature; and]

[(7) official transcripts.]

(2) the appropriate fee(s) per §801.18 of this title (relating to Fees);

(3) an official transcript(s), indicating the date the degree required for licensure was awarded or conferred and sent directly to the board's office from all colleges or universities where post-baccalaureate course work was completed;

(4) supporting documentation and other materials the board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds or has held a certificate or license to practice marriage and family therapy; and

(5) [(e)] proof [~~Effective September 1, 2006, all applicants for licensure must submit proof~~] of successful completion of the jurisprudence exam [~~examination at the time of application. The jurisprudence examination must be completed~~] no more than six months before [~~prior to~~] the date the [~~of licensure~~] application is received.

~~[(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and is valid only when it bears the supervisor's signature.]~~

~~[(c) Course work. An applicant must have the official transcript(s) showing all relevant course work sent directly to the board office.]~~

~~[(d) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.]~~

§801.74. Application to take Licensure Examination.

(a) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) in lieu of an official transcript as required in §801.73(c) of this title, a letter from a college or university official stating the applicant is in good academic standing and has completed or is enrolled in a graduate internship in marriage and family therapy or an equivalent internship;

(3) a copy of government-issued picture identification (i.e., driver's license, passport);

(4) an Examination Security Information Acknowledgement Form; and

(5) a Course Equivalency Request Form, if applicant who holds a master's or doctorate degree in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with minimum course content as described in §801.114 of this title (relating to Academic Course Content).

(b) Academic Requirements. An applicant must meet the academic requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(c) Academic Course Content. An applicant must meet the academic course content requirements as mandated in §801.114 of this title.

§801.75. Application for Licensed Marriage and Family Therapist Associate (LMFT Associate).

(a) Qualifications. An applicant for LMFT Associate must meet the qualifications required by §502.252(b) of the Act.

(b) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) Supervisory Agreement Form; and

(3) proof of achieving a passing score on a licensure examination.

(c) Academic Requirements. An applicant for LMFT Associate must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(d) Academic Course Content. An applicant for LMFT Associate must meet the academic course content requirements as mandated in §801.114 of this title (relating to Academic Course Content).

§801.76. Application for Licensed Marriage and Family Therapist (LMFT).

(a) Qualifications. An applicant for LMFT must meet the qualifications required by §502.252(b) of the Act.

(b) Application Requirements. An applicant must submit:

(1) all requirements in §801.73 of this title (relating to Required Application Materials);

(2) a Licensed Supervised Experience Verification Form; and

(3) proof of achieving a passing score on a licensure examination.

(c) Academic Requirements. An applicant for LMFT must meet the education requirements as prescribed in §801.112 of this title (relating to General Academic Requirements).

(d) Academic Course Content. An applicant for LMFT must meet the academic course content requirements as mandated in §801.114 of this title (relating to Academic Course Content).

(e) Supervised Clinical Experience Requirements and Conditions. An applicant for LMFT must meet the supervised clinical experience requirements and conditions as mandated in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53,

Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.91. Purpose of Criteria for Determining Fitness of Applicants.

The purpose of this subchapter is to establish the criteria by which the board will determine the qualifications required of applicants for approval for examination or [and/or] licensure.

§801.92. Finding of Non-Fitness for Licensure.

The board may deny a license if it finds an applicant: [The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license:]

(1) lacks [lack of] the necessary skills and abilities to provide adequate marriage and family therapy services;

(2) misrepresented any information [any misrepresentation] in the application or other materials submitted to the board;

(3) violated [the violation of] any provision of the Act or this chapter applicable to an unlicensed person in effect at the time of application [which is applicable to an unlicensed person];

(4) violated [the violation of] any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation; or

(5) has a criminal conviction per §801.332 of this title (relating to Criminal Conviction).

§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of License.

The board may take disciplinary action based upon information received after issuance of a license, even if the violation occurred before [prior to] issuance of the license.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.115

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.111. Purpose of Academic Requirements.

This subchapter establishes the academic requirements for examination and licensure for an LMFT and LMFT Associate. [a marriage and family therapist or for a marriage and family therapist associate.]

§801.112. General Academic Requirements.

(a) An applicant must submit an official transcript showing: [The board shall accept the following as meeting academic requirements for licensure as a marriage and family therapist associate:]

(1) a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(2) a master's degree from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), Marriage, Couples, and Family Counseling (MCFC) specialization which meets the requirements of §801.114(b)(8) of this title (relating to Academic Course Content) and starts on or after January 1, 2017, (the earliest class reported on one of an applicant's official transcripts denotes the start of a program); or

(3) a master's or doctorate degree from an accredited institution or program as defined in §801.2 of this title (relating to Definitions) in a related mental health field with a planned course of study in marriage and family therapy as described in §801.113(d) and (e) of this title (relating to Academic Requirements) with the required minimum course content as described in §801.114 of this title. [Prior to being qualified to receive a license as a marriage and family therapist under this section, the applicant shall complete the pre-graduation practicum deficit in addition to the post-graduate supervised experience requirements consistent with the requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions).]

(b) An applicant must submit an evaluation [Degrees and coursework received at foreign universities shall be acceptable only if the degree conferred and coursework has been determined] by a member of the National Association of Credential Evaluation Services (NACES) of any degree or coursework completed at a foreign university. Staff may not accept a foreign degree or course unless NACES has determined it to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. [It is the applicant's responsibility to have degrees and coursework so evaluated.]

(c) An applicant must submit a course description from an official school catalog or syllabus for any course listed on the transcript with a title [The relevance to the licensing requirements of academic courses, the titles of which are] not self-explanatory or apparently relevant to academic requirements.[; must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.]

(d) The board will not accept any undergraduate courses as meeting any academic requirements unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school. [~~Undergraduate courses taken by an applicant that meet the academic requirements shall not be accepted by the board unless the applicant's official transcripts clearly show that the courses were awarded graduate credit by the school.~~]

(e) The board will accept as meeting academic requirements only those courses shown on the applicant's transcript as: [~~Coursework submitted by an applicant must clearly show that it was completed with a passing grade or for credit.~~]

(1) part of the applicant's program of studies and as completed with a passing grade or for credit; or

(2) taken outside the applicant's program of studies and completed with at least a "B" or "pass."

[~~(f) In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.~~]

(f) [~~(g)~~] The [~~In evaluating transcripts, the~~] board will [~~shall~~] consider a quarter hour of academic credit as two-thirds of a semester hour.

§801.113. Academic Requirements.

(a) An applicant [~~Persons applying~~] for the licensure examination must have completed or be enrolled in a board-approved marriage and family therapy graduate internship program[~~, or its equivalent, which is approved by the board~~].

(b) An applicant for LMFT Associate or LMFT [~~Persons applying for licensure as a marriage and family therapist or a marriage and family therapist associate~~] must have a master's or doctorate degree in marriage and family therapy or a master's or doctorate degree in a related mental health field with course work and training determined by the board to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the board with:[~~.~~]

(1) at least 45 semester hours for an applicant who started a program before August 1, 2017; or

(2) at least 60 semester hours for an applicant who started a program on or after August 1, 2017.

(3) The earliest class reported on one of an applicant's official transcripts denotes the start of a program.

[~~(c) A degree or course work in a master's or doctorate in marriage and family therapy or a related mental health field must include at least 45 semester hours which the applicant completed at a regionally accredited school, except that those applicants starting August 1, 2017, must have 60 semester hours.~~]

(c) [~~(d)~~] A degree or course work in a related mental health field must have been a planned course of study designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

(d) [~~(e)~~] Examples of degrees in a related mental health field may include [~~but are not limited to~~] counseling, psychology, social work, or family studies with an emphasis on Marriage and Family Therapy. Degrees in fields other than those listed may be reviewed by an appropriate committee of the board for eligibility toward course equivalency.

§801.114. Academic Course Content.

(a) An applicant who holds a graduate degree in a mental health-related field must have course work in each of the following areas [~~(one course is equal to three semester hours)~~]:

(1) theoretical foundations of marriage and family therapy--three semester hours [~~one course~~];

(2) assessment and treatment in marriage and family therapy--12 semester hours [~~four courses~~];

(3) human development, gender, multicultural issues and family studies--six semester hours [~~two courses~~];

(4) psychopathology--three semester hours [~~one course~~];

(5) professional ethics--three semester hours [~~one course~~];

(6) applied professional research--three semester hours [~~one course~~]; and

(7) supervised clinical internship [~~practicum~~]--12 months or nine semester hours.

(b) An applicant who begins a graduate degree program in marriage and family therapy or a mental health-related field on or after August 1, 2017, must complete course work and the minimum required semester hours in each of the following areas (the earliest class reported on one of an applicant's official transcripts denotes the start of a program): [~~(one course is equal to three semester hours):~~]

(1) theoretical knowledge and foundations of marriage and family therapy--three semester hours--including [~~but is not limited to~~] the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy [~~(3 semester hours)~~];

(2) assessment and treatment in marriage and family therapy--12 semester hours--including but is not limited to treatment approaches specifically designed for use with a wide range of diverse couples, families, and children, including sex therapy, same sex couples, young children, adolescents, interfaith couples, crisis intervention, and elderly [~~(12 semester hours)~~];

(3) human development, gender, multicultural issues and family studies--six semester hours; [~~(6 semester hours);~~]

(4) psychopathology--three semester hours--including [~~but is not limited to~~] traditional psycho-diagnostic categories including knowledge and use of the Diagnostic and Statistical Manual of Mental Disorders [~~(3 semester hours)~~];

(5) professional ethics--three semester hours--including [~~but is not limited to~~] professional identity of the marriage, couple, and family therapist, including professional socialization, scope of practice, professional organizations, licensure and certification; and ethical issues related to the profession of marriage, couple, and family therapy as well as the practice of individual therapy [~~(3 semester hours)~~];

(6) applied professional research--three semester hours--including [~~but is not limited to~~] research evidence related to MFT, becoming an informed consumer of research, and research and evaluation methods [~~(3 semester hours)~~];

(7) treatment of addictions and management of crisis situations--no minimum requirements [~~(no minimum requirements)~~];

(8) supervised clinical internship [~~practicum~~]--12 months or nine semester hours. During the supervised clinical internship,

[~~practicum,~~] the applicant must have 300 hours of experience, of which: [~~(direct and non-direct), including a minimum of 75 hours of direct client contact with couples and families out of an overall minimum of 150 hours of direct client contact). The board may count excess practicum hours toward the experience requirements of this subchapter if:~~]

(A) at least 150 hours must be direct client contact hours; and [~~the hours were part of the applicant's academic practicum or internship accumulated after the commencement of the applicant's planned graduate program;~~]

(B) of the 150 direct client contact hours, at least 75 hours must be direct client contact with couples and families. [~~the relational, or other direct client contact hours and/or non-direct hours that are in excess of the 300-hour practicum required by this paragraph; and~~]

[~~(C) no more than 400 hours of the direct plus non-direct hours.~~]

(c) The remaining courses needed to meet the 45 or 60 [~~45/60~~] graduate semester hour requirement must [~~shall~~] be marriage and family therapy or related course work [~~that are~~] in areas directly supporting the development of an applicant's professional marriage and family, individual, or group therapy skills.

(d) Staff may issue an LMFT Associate license to an applicant who has a deficiency in pre-graduate internship months, semester hours, or clock hours required by subsection (a)(7) or (b)(8) of this section but must require the applicant complete the deficient months, semester hours, or clock hours in addition to the post-graduate, licensed supervised clinical experience requirements in §801.142 of this title (relating to Supervised Clinical Experience Requirements and Conditions) before awarding an LMFT license to that applicant.

§801.115. Academic Requirements and Supervised Clinical Internship [~~Practicum~~] Equivalency for Applicants Currently Licensed as an LMFT in Another Jurisdiction.

An applicant currently licensed as a marriage and family therapist in another jurisdiction of the United States[,] who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following.

(1) If an applicant has been licensed as an LMFT [~~a marriage and family therapist~~] in another [~~a~~] United States jurisdiction for the two [~~5~~] years immediately preceding the date the application is received, the academic requirements (including the internship) are considered met. [~~practicum) will be considered to have been met. If licensed for any other 5-year period, the board will determine whether academic requirements have been met.~~]

(2) If an applicant has been licensed as an LMFT [~~a marriage and family therapist~~] in another [~~a~~] United States jurisdiction for less than two [~~5~~] consecutive years immediately preceding the date the application is received, staff may grant one month of credit for every two months of independent marriage and family therapy practice toward [~~, the applicant may make up~~] any deficit in the academic internship [~~practicum~~] requirement [~~by receiving 1 month of credit toward the requirement for every 2 months of independent licensed marriage and family therapy experience~~].

[~~(3) If an applicant is licensed as a marriage and family therapist associate in another United States jurisdiction or has been licensed as a marriage and family therapist for less than 5 consecutive years, the applicant must meet all academic course requirements, including the practicum. The applicant may make up any deficit in the practicum requirement by applying post-graduate supervised experience accrued toward licensure as a licensed marriage and family therapist in another jurisdiction on a month for month equivalency by endorsement.~~]

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

The amendment and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment and new sections affect Texas Occupations Code, Chapter 502.

§801.141. Purpose of Experience Requirements.

The purpose of this subchapter establishes the minimum experience requirements for licensure as an LMFT [~~a marriage and family therapist~~].

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the board.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy including at least 3,000 hours of supervised clinical practice, of which:

(A) at least 1,500 hours must be providing direct clinical services, with no more than 500 hours provided via technology-assisted services (as approved by the supervisor); and

(B) of the 1,500 hours of direct clinical services, at least 750 hours must be providing direct clinical services to couples or families.

(C) of the 3,000 hours of supervised clinical practice, at least 200 hours must be board-approved supervision as defined in §801.2 of this title (relating to Definitions), of which:

(i) at least 100 hours must be individual supervision; and

(ii) no more than 50 hours may be provided by telephonic services;

(iii) with unlimited hours by live video.

(iv) While providing services, the LMFT Associate must participate in a minimum of one hour of supervision every week, except for good cause shown.

(D) The remaining hours may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(2) Staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title (relating to Academic Course Content) toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(C) No more than 100 excess graduate internship supervision hours may be counted toward the minimum requirement of at least 200 hours of board-approved supervision.

(3) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(4) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act or this chapter.

(5) Within 60 days of the initiation of supervision, an LMFT Associate must submit to the board a Supervisory Agreement Form for each board-approved supervisor.

(6) An LMFT Associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(7) Except as specified in paragraph (2) of this section, hours of supervision and supervised clinical experience accrued toward an out-of-state LMFT license may be accepted only by endorsement.

(A) The applicant must ensure supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as an LMFT in another United States jurisdiction for the two years immediately preceding the date the application is received, the supervised clinical experience requirements are considered met. If licensed for any other two-year period, the board will determine whether clinical experience requirements have been met.

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the following:

(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40-hour continuing education course in clinical supervision; or

(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of board approval of the Supervisory Agreement Form; and

(3) a record of all locations at which the LMFT Associate will practice.

(e) A board-approved supervisor must maintain and sign a record(s) to document the date of each supervision conference and document the LMFT Associate's total number of hours of supervised experience accumulated up to the date of the conference.

(f) Within 30 days of the termination of supervision, a supervisor must submit written notification to the board.

(g) Both the LMFT Associate and the board-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may not supervise more than 12 persons at one time.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(h) Supervisor status expires with the LMFT license.

(i) To maintain board approval as a supervisor, a supervisor must successfully complete the jurisprudence exam each renewal period.

(j) A supervisor who fails to meet all requirements for licensure renewal must not advertise or represent himself or herself as a supervisor in any manner.

(k) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the board.

(l) A supervisor who becomes subject to a board disciplinary order is no longer an approved supervisor. The person must:

(1) inform each LMFT Associate of the board disciplinary order;

(2) refund all supervisory fees received after date the board disciplinary order was signed by the board chair to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(m) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(n) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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22 TAC §801.142, §801.143

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.142. Supervised Clinical Experience Requirements and Conditions.

§801.143. Supervisor Requirements.

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

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SUBCHAPTER H. EXAMINATIONS

22 TAC §801.172, §801.173

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.172. Frequency.

§801.173. Applying for Licensure Examination.

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

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22 TAC §801.174

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202,

to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.174. Licensure and Jurisprudence Examinations.

(a) The board will [~~shall~~] accept the national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(b) An applicant must [~~shall~~] apply to take the licensure examination per §801.74 of this title (relating to Application to Take Licensure Examination). [~~on a form prescribed by the board.~~] The applicant must [~~will~~] pay the examination fee to the appropriate party as dictated by the current examination contract or agreement.

(c) The board, or its designee, will [~~shall~~] determine the times and places for licensing examinations and give reasonable public notice.

(d) The board, or its designee, will [~~shall~~] notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the board is notified of a potential delay of notification of exam results, the board will [~~shall~~] notify the examinee as soon as possible regarding the delay.

(e) An applicant who fails the examination may retake the examination as many times as needed until the expiration of the application. The application for examination expires one year after the date of the first unsuccessful examination.

~~(e) Procedures for failure of an applicant to pass a licensure examination, if all minimum application and other requirements are met and current, are as follows:~~]

~~(1) An applicant who fails an examination may retake the examination at the next scheduled date.~~]

~~(2) Fee for the examination is in accordance with subsection (b) of this section.~~]

~~(3) The applicant must reschedule the examination and resubmit the examination fee.~~]

~~(4) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee.~~]

(f) At the time of application, an applicant for licensure must submit proof of successful completion of the jurisprudence exam as defined in §801.2 of this title (relating to Definitions).

~~(f) If an applicant fails the licensure examination two or more times, the board may require the applicant to identify additional courses of study which address the area(s) of deficit; and present satisfactory evidence of completion of the courses before approving the applicant to reschedule the licensure examination.~~]

~~(g) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application.~~]

(g) ~~(h)~~] The jurisprudence exam [~~examination~~] must have been completed no more than six months before [~~prior to~~] the [~~licensure application~~] date the application is received.

(h) ~~(i)~~] The jurisprudence exam [~~examination is available as an online learning experience and applicable~~] fees are paid [~~payable~~] directly to the approved vendor.

~~(j) The jurisprudence examination content is based on the Act, the rules of the board, and other state laws and rules that relate to the practice of marriage and family therapy.~~]

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

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SUBCHAPTER I. LICENSING

22 TAC §801.201, §801.202

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.201. General Licensing.

§801.202. Associate License.

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

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Jennifer Smotherman, MA, LPC, LMFT
Chair
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22 TAC §§801.201 - 801.204

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.201. General Licensing.

(a) Within 30 days of receipt of application materials, staff will either issue a license with a unique license number or notify the applicant of a deficiency.

(b) A licensee must submit a written request for a duplicate license with the appropriate fee. A licensee must return a damaged license certificate or renewal card to the board.

(c) Within 30 days of receipt of licensee's written request and payment for a duplicate license, staff will mail the license certificate to the licensee's last-reported mailing address.

(d) A licensee is responsible for the use or misuse of an original or duplicate license.

§801.202. LMFT Associate License.

(a) The initial LMFT Associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months.

(b) An LMFT Associate who has held the LMFT Associate license for 72 months and submitted documentation to the board to satisfy all minimum requirements for LMFT licensure, except the 750-hour requirement set in §801.142(1)(B) of this title (relating to Supervised Clinical Experience Requirements and Conditions) and requiring at least 750 hours of direct clinical services to couples or families, may renew his or her LMFT Associate license only once more (not exceeding 96 months of licensure as an LMFT Associate).

(c) An LMFT Associate who has held the LMFT Associate license for 72 months (or 96 months if subsection (b) of this section applies) and has not met the minimum requirements for LMFT licensure, may not renew but must reapply for the LMFT Associate license, meeting all current application requirements and passing the national licensure examination no more than six months before the date the application is received.

§801.203. Provisional LMFT License.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.76 of this title (relating to Application for Licensed Marriage and Family Therapist (LMFT)); [~~§801.73 of this title (relating to Required Application Materials);~~]

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board;

(3) is sponsored by a Texas LMFT [~~licensed marriage and family therapist in Texas~~] with whom the provisional license holder may practice under this section;

(4) provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Licensure); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if the board determines that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board will [~~shall~~] issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examinations [~~examination~~] required by Subchapter H of this chapter (relating to [~~Licensure~~] Examinations);

(2) the provisional license holder provides official graduate transcripts meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter; and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

§801.204. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) This section implements licensing procedures in accordance with Texas Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). The following definitions apply in this section:

(1) Active duty--Current full-time military service in the U.S. Armed Forces or active duty military service as a member of the Texas military forces, as defined by Texas Government Code, §437.001 (relating to Texas Military), or similar military service of another state.

(2) License--A license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(6) U.S. Armed Forces--The U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps or a reserve unit of one of those branches of the Armed Forces.

(b) An applicant must [~~shall~~] provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes[~~, but is not limited to,~~] copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status will [~~shall~~] not be processed under the requirements of this section.

(c) Upon request, an applicant must [~~shall~~] provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant must [~~shall~~] provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant will [~~shall~~] receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education [~~that is~~] relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military service member, military veteran, or military spouse who holds a current unrestricted license issued by another jurisdiction that has substantially equivalent licensing requirements must [~~shall~~] complete and submit an application form and a supplemental application form for military service member, military veteran, or military spouse. The applicant must satisfy the application and supplemental application requirements and meet the substantial equivalency requirements of the out-of-state jurisdiction. The applicant may not be subject to unresolved allegations related to the out-of-state license. The applicant must be free of any criminal background relevant to the license and must be free of any facts or circumstances that would provide grounds for denial of the license. As soon as practicable after the applicant submits a complete application, staff [~~the department~~] will process the application and [~~will~~] issue a license to an applicant whose application meets the requirements of this section. A license issued in accordance with this section has [~~will have~~] the same term as the applicable license type otherwise issued under the Act and this subchapter. Renewal of the license is [~~shall be~~] in accordance with subsection (i) of this section.

(g) In accordance with Texas Occupations Code, §55.004(c) (relating to Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining [~~that~~] the applicant holds a license issued by another jurisdiction [~~that~~] has licensing requirements substantially equivalent to those of this state.

(h) An applicant who is a military service member, military veteran, or military spouse and who held an unrestricted license [~~registration~~] in this state within the five years preceding the [~~application~~] date the application is received must [~~shall~~] complete and submit an application form and a supplemental application form for military service member, military veteran, or military spouse. The applicant must satisfy the application and supplemental application requirements. The applicant may not be subject to unresolved allegations related to the license [~~registration~~]. The applicant must be free of any criminal background relevant to the license [~~registration~~] and must be free of any facts or circumstances that would provide grounds for denial of the license [~~registration~~]. As soon as practicable after the applicant submits a complete application, staff [~~the department~~] will process the application and [~~will~~] issue a license [~~registration~~] to an applicant whose application meets the requirements of this section. Renewal of the license must [~~registration shall~~] be in accordance with subsection (i) of this section.

(i) If the board issues an initial license to an applicant who is a military service member, military veteran, or military spouse in accordance with subsection (f) of this section, the board will [~~shall~~] assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board will [~~shall~~] provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license may [~~shall~~] not be renewed, is [~~shall be~~] allowed to expire, and becomes [~~shall become~~] ineffective if the applicant does not provide proof of completion at the time of the first application for license renewal.

(j) Notwithstanding any other law, staff may [~~the department will~~] waive the license application fee for an applicant described in paragraph (1) or (2) of this subsection. An applicant must [~~shall~~] provide any documentation requested by staff [~~the department~~] to verify [~~that~~] the applicant is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by an out-of-state regulatory authority that has license requirements that are substantially equivalent to the requirements for the license in this state.

(k) For license renewal, staff may [~~the department will~~] exempt an individual who holds a license issued by the board [~~the department~~] from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the program director [~~that~~] the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license [~~registration~~].

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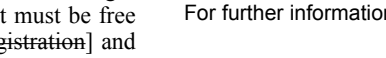

SUBCHAPTER J. LICENSE RENEWAL, INACTIVE STATUS, AND SURRENDER OF LICENSE

22 TAC §§801.232 - 801.237

The amendments and new section are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new section affect Texas Occupations Code, Chapter 502.

§801.232. General License Renewal.

(a) A licensee must renew the license biennially or by the expiration date, whichever comes first.

(b) Each licensee is responsible for renewing licensure and paying the renewal fee before the expiration date and will [~~shall~~] not be excused from paying late renewal fees or renewal penalty fees.

(c) A licensee must satisfy [~~have fulfilled~~] continuing education requirements prescribed by the board [~~rule~~] in order to renew licensure.

(d) A licensee whose license is not renewed due to failure to meet all requirements for licensure renewal must [~~shall~~] return his or her license certificate to the board and may [~~shall~~] not advertise or represent himself or herself as an LMFT Associate or LMFT [~~a licensed marriage and family therapist~~] in any manner.

(e) The board will [~~shall~~] deny renewal if required by the Texas Education Code, §57.491, relating to default [~~defaults~~] on a guaranteed student loan. [~~loans.~~]

(f) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§801.233. Staggered Renewals.

The board uses [~~shall use~~] a staggered system for licensure renewals; the renewal date of an LMFT [~~a marriage and family therapist~~] license shall be the last day of the licensee's birth month.

§801.234. Licensure Renewal.

(a) At least 30 days before [~~prior to~~] the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee. The licensure renewal form may be completed electronically if available. Failure to receive notice does not relieve the licensee from the responsibility to timely renew.

(b) The licensure renewal form will [~~shall~~] require the licensee to provide current addresses, telephone numbers, and information regarding completion of continuing education requirements.

(c) A license is not renewed until the board receives the completed licensure renewal form and the renewal fee, and the licensee has complied with the continuing education requirements. The board or its designee may grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

(d) The board will [~~shall~~] issue a renewal card to a licensee who has met all requirements for renewal.

§801.235. Late Renewal.

(a) A person who renews a license after the expiration date but on or before [~~within~~] 90 days after the expiration date must [~~shall~~] pay the renewal fee and late renewal fee prescribed in §801.18 of this title (relating to Fees). [~~plus one-fourth of the current biennial license renewal fee.~~]

(b) A person whose license was not renewed on or before 90 days after the expiration date may renew before one year after the expiration date [~~If a person's license has been expired for 90 days but less than one year the person may renew the license~~] by paying [~~to the board~~] the renewal fee and late renewal fee prescribed in §801.18 of this title. [~~a fee that is equal to one-half of the current biennial license renewal fee.~~]

(c) [~~(b)~~] A person whose license was not renewed before one year after [~~within one year of~~] the expiration date may reapply [~~seek to obtain a new license by reapplying~~] for a license, submitting to examination[~~,~~] and complying with current requirements and procedures for obtaining an original license.

(d) [~~(c)~~] The board may renew without re-examination an expired license of a person who was an LMFT [~~licensed as a Marriage and Family Therapist~~] in this state, moved to another state, and is currently licensed as a marriage and family therapist [~~Marriage and Family Therapist~~] and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee equal to the examination fee for the license.

§801.236. Inactive Status.

(a) A licensee may request his or her active license be placed on inactive status by submitting to the board the designated form and fee prescribed in §801.18 of this title (relating to Fees).

(b) A licensee cannot practice while the license is inactive.

(c) Board-approved supervisory authority is relinquished upon moving the license to inactive status.

(d) Inactive licenses remain subject to disciplinary action by the board.

(e) No continuing education is required while a license is inactive.

(f) To return an inactive license to active status, the licensee must submit:

(1) the reactivation form designated by the board;

(2) the reactivation fee as prescribed in §801.18 of this title;

(3) proof of completion of jurisprudence exam no more than six months before submitting request for active status; and

(4) proof of completion of continuing education for the licensee's current two-year renewal period.

(g) Neither continuing education nor fees will be prorated.

(h) To regain board-approved supervisory authority, the licensee must reapply meeting all current requirements.

§801.237. Surrender of License.

(a) A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion. If there is no complaint pending, board staff may [~~shall~~] accept the surrender and void the license.

(b) When a licensee has offered to [~~the~~] surrender [~~of~~] his or her license after a complaint has been filed which alleges violations of the Act or this chapter, the board may [~~shall~~] consider whether to accept the license surrender. If the board accepts such a surrender, that surrender is deemed to be the result of a formal disciplinary action and will [~~shall~~] be reported as formal disciplinary action. Surrender of a license without acceptance by the board does [~~shall~~] not deprive the board of jurisdiction over the licensee in accordance with the Act or other law.

(c) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §801.236

The repeal is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeal is Texas Occupations Code, Chapter 502.

§801.236. Inactive Status.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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For further information, please call: (512) 776-6972

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.262 - 801.264, 801.266, 801.268

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections are Texas Occupations Code, Chapter 502.

§801.262. Deadlines.

Continuing education requirements for renewal must [~~shall~~] be fulfilled during board-designated periods beginning on the first day of a licensee's renewal period and ending on the last day of the licensee's renewal period. These renewal periods are generally biennial, but if the renewal is related to the issuance of an initial license, the period may [~~shall~~] be for a period of 13 to 24 months, depending on the licensee's birth month.

§801.263. Requirements for Continuing Education.

(a) An LMFT must complete 30 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines).

(b) An LMFT Associate must complete 15 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title.

(c) All licensees are required to complete six hours of ethics each renewal period.

(d) A board-approved supervisor must complete at least three hours of clinical supervision continuing education each renewal period.

§801.264. Types of Acceptable Continuing Education.

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations, the education must be received from a continuing education provider that:

(1) ensures the education provided is related to the practice of professional counseling;

(2) ensures the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;

(3) verifies attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned;

(4) maintains all continuing education records and documentation for at least three years; and

(5) provides participants a mechanism for evaluation of each continuing education activity.

§801.266. Determination of Clock Hour Credits and Credit Hours Granted.

The board credits continuing education activities that meet the criteria §801.264 of this title (relating to Types of Acceptable Continuing Education) on a one-for-one basis with one credit hour for each clock hour spent in the continuing education activity, unless otherwise designated in the provisions below:

(1) Completing the jurisprudence exam once per renewal period may count for one hour of the ethics requirement described in §801.263 (relating to Requirements for Continuing Education).

(2) Hours spent providing clinical supervision of a marriage and family therapy intern or an LMFT Associate may count for no more than one-half of the continuing education required each renewal period.

(3) A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the continuing education required each renewal period. The same seminar or topic may not be used more than once biennially.

(4) An author of a book or peer reviewed article which enhances a marriage and family licensee's knowledge or skill may claim continuing education credit not to exceed one-half of the continuing education required each renewal period.

§801.268. Reporting and Auditing of Continuing Education.

(a) At the time of renewal, the licensee must report completion [~~Completion~~] of approved continuing education of no less than 30 hours [~~must be reported by the licensee at the time of renewal~~].

(b) The board will [~~shall~~] conduct random audits of a licensee's compliance with the continuing education requirements [~~by licensees~~]. A licensee selected for audit must [~~shall~~] submit continuing education documentation upon request. Individual continuing education certificates of attendance may [~~shall~~] not be submitted unless the licensee is requested to do so by the board.

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22 TAC §§801.263 - 801.267

The repeals are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeals affect Texas Occupations Code, Chapter 502.

§801.263. Requirements for Continuing Education.

§801.264. Types of Acceptable Continuing Education.

§801.265. Continuing Education Sponsor.

§801.266. Criteria for Approval of Continuing Education Activities.

§801.267. Determination of Clock Hour Credits.

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

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291 - 801.294, 801.296 - 801.304

The amendments and new sections are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments and new sections affect Texas Occupations Code, Chapter 502.

§801.291. General Complaints and Violations.

The purpose of this subchapter is to establish procedures for imposing disciplinary actions [~~the denial, revocation, probation, or suspension of~~

a license, reprimand of a licensee, or imposition of an administrative penalty,] and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following are [shall be] grounds for imposing disciplinary action [revocation, probation or suspension of a license, imposition of an administrative penalty, refusal to renew a license, or reprimand of a licensee] if a person [licensee] has:

(A) been convicted of an offense set forth in Texas Occupations Code, Chapter 53, related to Consequences of a Criminal Conviction [a felony or a misdemeanor involving moral turpitude];

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization or by a governmental agency;

(I) otherwise violated the Act or board rules;

(J) committed an act for which liability exists under the Texas Civil Practice and Remedies Code, Chapter 81, concerning Sexual Exploitation by Mental Health Services Provider;

(K) violated an order of the board; or

(L) engaged in conduct that discredits or tends to discredit the profession of marriage and family therapy.

(2) If the board suspends a license, the suspension remains [shall remain] in effect for the period of time stated in the order or until the board determines [that] the reason for the suspension no longer exists.

(3) If a suspension overlaps a license renewal date, the suspended [marriage and family] licensee must [shall] comply with all [the] renewal procedures in Subchapter J of this chapter (regarding License Renewal, Inactive Status, and Surrender of License) [in this chapter]; however, the suspension will [shall] remain in effect pursuant to paragraph (2) of this subsection.

(4) Upon revocation, suspension or non-renewal of a license, a licensee must [shall] return his or her license certificate and all existing renewal cards to the board.

§801.292. Criteria for Denial of a License.

The board may base the denial of a license upon the substantiation of any of the following [related to an applicant may be, as the board determines, the basis for the denial of the licensure of the applicant]:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services;

(2) misrepresentation of professional qualifications or associations;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or former client [except as noted in §801.45 of this title (relating to Sexual Misconduct)];

(7) a breach of confidentiality of a client except where allowed by law;

(8) abuse [of the use] of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board;

(10) the violation of any provision of the [Licensed Marriage and Family Therapist] Act or this chapter; and

(11) any other criteria listed in §801.291 of this title (relating to General Complaints and Violations).

§801.293. Procedures for Imposing Disciplinary Action [Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee].

(a) The board's executive director or his or her [his/her] designee will [shall] give written notice to the person that the board proposes to impose disciplinary action. [deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).]

(b) Before imposing disciplinary action, [Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee], the board will [ethics committee shall] give the applicant or licensee the opportunity for an informal conference or a formal hearing or both in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Settlement Conferences), and Subchapter O of this chapter (relating to Formal Hearings).

§801.294. Violations by an Unlicensed Person.

(a) A person commits an offense if the person knowingly or intentionally acts as an LMFT or LMFT Associate [a licensed marriage and family therapist] without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional marriage and family therapy services but does not act as an LMFT or LMFT Associate [a licensed marriage and family therapist] is not in violation of the Act.

(c) If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of marriage and family therapy, the board after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of a cease and desist order constitutes grounds for the imposition of an administrative penalty by the board.

§801.296. Complaint Procedures.

(a) A complaint must be submitted to the board office on a form prescribed by the board to be an eligible complaint for board action.

(b) Allegations not involving violations of §801.45 of this title (relating to Sexual Misconduct) must be filed within 5 years of the date of termination of professional services or within 5 years of a minor client's 18th birthday, whichever is later.

(c) Staff will send acknowledgement to the complainant upon receipt of an eligible complaint.

(d) Eligible complaints will be reviewed by the review team whose members are designated in board policy to determine if the board has jurisdiction over the complaint and to determine the nature of the allegations.

(1) Complaints outside of the jurisdiction of the board will be dismissed.

(2) Jurisdictional complaints will be reviewed by the team to determine if the complaint states an allegation which, if true, constitutes a violation of the Act or board rules in this chapter.

(A) Complaints that do not state a violation of the Act or board rules in this chapter will be dismissed.

(B) Complaints that state a violation of the Act or board rules in this chapter will be investigated by board staff.

(3) Complaints under the jurisdiction of another agency will be referred to that agency.

(e) Licensees will receive notice of an investigation in writing. Notice to a licensee is effective and service is complete when sent by certified or registered mail to the licensee's address of record at the time of the mailing.

(f) Following completion of the investigation, staff will draft a report. This report will include a recommendation as to whether the investigation has produced sufficient evidence to establish by a preponderance of the evidence there was a violation of the Act or board rules in this chapter.

(g) The review team and counsel for the board will review the complaint's case file, including the investigation report and all evidence, to determine if there is sufficient evidence to demonstrate by a preponderance of the evidence a violation of the Act or board rules in this chapter occurred.

(1) A complaint for which the team and counsel determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter occurred will result in the issuing a Notice of Violation to the Respondent proposing disciplinary action based on the penalty matrix set by board policy and the Respondent will be given an opportunity to request an Informal Settlement Conference.

(2) A complaint for which staff determines the preponderance of the evidence indicates a violation of the Act or board rules in this chapter did not occur will be dismissed.

(h) At each board meeting, staff will provide the board with a list of complaints dismissed for lack of jurisdiction or lack of violation since the previous meeting of the board.

§801.297. Monitoring of Licensees.

(a) Staff will [~~The department shall~~] maintain a complaint tracking system.

(b) Each licensee who [~~that~~] has had disciplinary action taken against his or her license must [~~shall be required to~~] submit regularly scheduled reports as[~~, if~~] ordered by the board. [~~The report shall be scheduled at intervals appropriate to each individual situation.~~]

(c) The executive director or executive director's designee will monitor a licensee's compliance with board order or directive, including periodic [~~shall review the~~] reports and will direct staff to open a new complaint alleging non-compliance [~~notify the ethics committee~~] if the requirements of the disciplinary action are not met.

(d) A complaint alleging non-compliance is processed per §801.296 of this title (relating to Complaint Procedures) and may result in a [~~The ethics committee may consider~~] more severe disciplinary action [~~proceedings if non-compliance occurs~~].

(e) As an alternative to the denial of a license, the board may, as a condition of initial licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against his or her [~~their~~] license, but must comply fully with the board order [~~of the board~~] or face possible formal disciplinary action [~~levied by the board~~]. Factors that may constitute a potential threat to public health or safety may include[~~, but are not limited to,~~] reports of chemical abuse by a licensee, mental or [~~and/or~~] physical health concerns, or [~~and/or~~] criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Probation. If probation is ordered [~~or agreed to~~], the following general conditions of probation [~~terms~~] may be required. [~~General conditions of probation.~~]

(1) The licensee must [~~shall~~] obey all federal, state and local laws and rules governing marriage and family therapy practice [~~in this state~~].

(2) Under penalty of perjury, the licensee must [~~shall~~] submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(3) The licensee must [~~shall~~] comply with the board's probation monitoring program.

(4) The licensee must [~~shall~~] appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(5) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. No more than 30 days after such a move, the licensee must submit proof to the board that he or she has notified the [~~The~~] marriage and family therapist licensing authorities of the jurisdiction to which the licensee is moving or has moved [~~must be promptly notified~~] of the licensee's probationary status in this state. The probationary period resumes [~~will resume~~] when the licensee returns to this [~~the~~] state to [~~reside or~~] practice.

(6) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license [~~and/or board-approved supervisor status~~] or take other appropriate disciplinary action. The period of probation will [~~shall~~] be extended until the matter is resolved. [~~final.~~]

(7) The licensee must [~~shall~~] promptly notify in writing all principal(s) in jurisdictions [~~settings~~] in which the licensee may practice [~~practices~~] marriage and family therapy of his or her probationary status and provide proof of that notification to the board within 30 days of the effective date of the order.

(8) While on probation, the licensee may [~~shall~~] not [~~act as a supervisor or~~] gain any hours of supervised clinical experience [~~practice~~] required for any board-issued license.

(9) The licensee is responsible for paying the costs of complying with conditions of probation.

(10) The licensee must [~~shall~~] comply with the renewal requirements in the Act and the board rules.

(11) A licensee on probation may [~~shall~~] not practice marriage and family therapy except under the conditions described in the probation order.

[~~(12) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:~~]

[~~(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;~~]

[~~(B) submit a current job description from the agency in which the Marriage and Family Therapist or Associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;~~]

[~~(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and~~]

[~~(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.~~]

[~~(g) Release from Probation.~~]

[~~(1) If the executive director believes that a licensee has satisfied the terms of probation, the executive director shall report to the ethics committee the status of the licensee's probation.~~]

[~~(2) If the executive director does not believe that the licensee has successfully completed probation, the executive director shall so notify the licensee and shall refer the matter to the ethics committee for review and recommendations. The licensee shall continue supervision and all requirements set forth in the board order, including periodic reports, until the ethics committee reviews and disposes of the case.~~]

(g) [~~(h)~~] Board-Ordered Supervision.

(1) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director or his or her designee [~~director/designee~~] within 30 days of the effective date of the board order [~~initiating supervision~~];

(B) submit a current job description from the agency in which the LMFT [~~marriage and family therapist~~] or LMFT Associate [~~associate~~] is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations, after giving the licensee formal notice and the opportunity to be heard, as grounds for further disciplinary action [~~as it evaluates the supervision verification the supervisee submits~~]; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(3) Board-ordered and mandated supervision timeframes are specified in the board order.

(h) Release from Probation.

(1) If the executive director believes a licensee has satisfied the terms of probation, the executive director will report to the Ethics Committee the status of the licensee's probation.

(2) If the executive director does not believe the licensee has successfully completed probation, the executive director will direct staff to open a new complaint alleging non-compliance.

(3) The complaint alleging non-compliance is processed per §801.296 of this title (related to Complaint Procedures) and may result in more severe disciplinary action.

(4) The licensee must continue supervision and all requirements set forth in the board order, including periodic reports, until the complaint alleging non-compliance is resolved.

§801.298. Default Orders.

(a) If a right to a hearing is waived, the board may [~~shall~~] consider an order taking disciplinary action as described in the written notice to the respondent [~~licensee or applicant~~].

(b) The respondent, usually a licensee or applicant, and the complainant will [~~shall~~] be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board will [~~shall~~] enter an order imposing appropriate disciplinary action.

§801.299. Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Act. An administrative penalty may be assessed for any violation as

determined by the Ethics Committee. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

[(b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his/her designee. The board shall request that the commissioner of health appoint the executive director of the board as his or/her designee.]

[(c) References in the Act to a "hearing examiner designated by the department" are references to an administrative law judge from the State Office of Administrative Hearings.]

(b) [(d)] A hearing to assess administrative penalties will [shall] be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act.

(c) [(e)] Severity levels with the corresponding [The amount of an] administrative penalty amounts are set forth in §801.302 of this title (relating to Severity Level and Sanction Guide). [shall be based on the following criteria.]

[(1) The seriousness of a violation shall be categorized by one of the following severity levels:]

[(A) Level I--Violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);]

[(B) Level II--Violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or]

[(C) Level III--Violations that have no or minor health or safety significance.]

[(2) The range of administrative penalties by severity levels are as follows:]

[(A) Level I--$500 - $5,000;]

[(B) Level II--$250 - $2,500; or]

[(C) Level III--no more than $250.]

[(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.]

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to comply [be in compliance] with a court order relating to child custody, the executive director or designee will [shall immediately] determine if the board has issued a license to the obligor [obligator] named on the order, and, if a license has been issued, will: [shall:]

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board will [shall] implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232 [as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433)] and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section must [shall] comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "Licensed Marriage and Family Therapist," "LMFT," "Provisional Licensed Marriage and Family Therapist," "Provisional LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Provisional Licensed Marriage and Family Therapist Associate," or "Provisional LMFT Associate" [licensed marriage and family therapist," "provisional licensed marriage and family therapist," or "licensed marriage and family therapist associate"] after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director or executive director's designee will [shall promptly] issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out in §801.18 of this title (relating to Fees) before [prior to] issuance of the license under subsection (g) of this section.

§801.301. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the Ethics Committee [ethics committee] or administrative law judge. Specific factors are to be considered as set forth herein.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the Violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm, such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed or exposed to harm;

(C) the degree of culpability of the licensee, such as whether the violation was:

(i) intentional or premeditated;

(ii) due to blatant disregard or gross neglect; or

(iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences the lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission of wrong or error, and acceptance of responsibility;

(B) appropriate degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violation by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity before [~~prior to~~] and following the violation;

(D) character references; and

(E) any other factors justice may require.

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

(1) Level One--Revocation of license with a possible administrative penalty from $500 to $5,000. These violations evidence intentional or gross misconduct on the part of the licensee or [~~and/or~~] cause or pose a high degree of harm to the public or [~~and/or~~] may require severe punishment as a deterrent to the licensee, or other licensees. [~~The fact that a license is revoked does not necessarily mean the licensee can never regain licensure.~~]

(2) Level Two--Extended suspension of license with a possible administrative penalty from $250 to $2,500. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--Moderate suspension of license with a possible administrative penalty of no more than $250. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time that is less than a year.

(4) Level Four--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--Reprimand. These violations involve inadvertent or relatively minor misconduct or [~~and/or~~] rule violations not directly involving the health, safety and welfare of the public.

(6) An administrative penalty may be assessed for any violation, as determined by the Ethics Committee [~~ethics committee~~]. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

§801.303. Other Actions.

A complaint may be resolved [~~The ethics committee may resolve pending complaints~~] with actions which are not considered formal disciplinary actions. These include: issuance of an advisory notice, warning letter; or informal reminder; issuance of a "Conditional Letter of Agreement;" or [~~and/or~~] other actions as deemed appropriate by the board. [~~ethics committee.~~] The licensee is not entitled to a hearing on the matters set forth in the notice, letter, reminder, "Conditional Letter of Agreement," or other action but may submit a written response that is [~~to be~~] included in the complaint record. Such actions [~~by the ethics committee~~] may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the notice, letter, reminder, "Conditional Letter of Agreement," or other action which [~~is~~] does not involve a formal disciplinary action.

(1) An advisory notice, warning letter or informal reminder. An [~~The ethics committee may resolve pending complaints by issuance of a formal~~] advisory notice, warning letter, or informal reminder informs the licensee of his or her [~~informing licensees of their~~] duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and whether the board has a concern about the circumstances surrounding the complaint.

(2) A "Conditional Letter of Agreement." A [~~The ethics committee may resolve pending complaints by issuance of a~~] "Conditional Letter of Agreement" informs the licensee of his or her [~~informing licensees of their~~] duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and creating board-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by the Ethics Committee [~~ethics committee~~], executive director, or designee; a signature of agreement by the licensee is not required. If the licensee fails to comply with all the board-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," staff will open [~~the licensee will not have a right to a subsequent review of the issues in the original complaint by the ethics committee, but rather,~~] a new complaint alleging non-compliance with a "Conditional Letter of Agreement" and the complaint alleging non-compliance will be processed per §801.296 (related to Complaint Procedures). Any [~~will be opened for the original violation(s), and notice of the violation(s) will be issued to the licensee, proposing to impose a formal disciplinary action as the resolution. The~~] disciplinary action proposed for failure to comply with a "Conditional Letter of Agreement" will be imposed per §801.293 of this title (relating to Procedures for Imposing Disciplinary Action). [~~will be a reprimand, unless otherwise specified by the ethics committee. "Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee" shall apply when a formal disciplinary action is proposed.~~]

(3) Other actions. A complaint may be resolved [~~The ethics committee may resolve pending complaints~~] with other actions which are not considered formal disciplinary actions.

§801.304. Reciprocal Discipline.

(a) Staff will open a complaint upon receipt of a report of disciplinary action against a licensee by another health licensing board in this state or any other jurisdiction.

(b) The disciplinary action imposed on a licensee who is disciplined by another health licensing board in this state or any other jurisdiction is the disciplinary action applicable to the same conduct or rule violation under board rules.

(c) A voluntary surrender of a license in lieu of disciplinary action or during an investigation by another health licensing board in this state or any other jurisdiction constitutes disciplinary action under this rule. Staff will open a complaint and the disciplinary action imposed is the disciplinary action applicable under board rules to the alleged conduct as if proved.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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22 TAC §801.296

The repeal is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The repeal affects Texas Occupations Code, Chapter 502.

§801.296. Complaint Procedures.

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

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Jennifer Smothermon, MA, LPC, LMFT
Chair
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For further information, please call: (512) 776-6972

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SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.331. Purpose of Criteria for Licensing of Persons with Criminal Backgrounds.

The purpose of this subchapter is to comply with Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) by establishing guidelines and criteria regarding the eligibility of persons with criminal backgrounds to obtain licenses as an LMFT or LMFT Associate [~~a marriage and family therapist~~].

§801.332. Criminal Conviction.

(a) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude.

(b) In considering whether a criminal conviction directly relates to the occupation of a licensee, the board will [~~shall~~] consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license [~~to be a licensed marriage and family therapist or licensed marriage and family therapist associate~~]. The following felonies and misdemeanors relate to the license [~~of a licensed marriage and family therapist or licensed marriage and family therapist associate~~] because these criminal offenses indicate an inability, or a tendency to be unable, to perform as a therapist [~~or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate~~]:

(A) the misdemeanor of knowingly or intentionally acting as a therapist without a license;

(B) a misdemeanor or [~~and/or~~] a felony offense under various chapters of the Texas Penal Code:

(i) concerning Title 5, which relates to offenses against the person;

(ii) concerning Title 7, which relates to offenses against property;

(iii) concerning Title 9, which relates to offenses against public order and decency;

(iv) concerning Title 10, which relates to offenses against public health, safety, and morals; and

(v) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses of this subparagraph; and

(3) other misdemeanors and felonies [~~that~~] the board may consider in order to promote the intent of the Act and this chapter;

(4) 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; and

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an LMFT or LMFT Associate [~~a licensed marriage and family therapist or licensed marriage and family therapist associate~~]. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, Chapter 53.

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Jennifer Smothermon, MA, LPC, LMFT
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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SUBCHAPTER N. INFORMAL SETTLEMENT CONFERENCES

22 TAC §801.351

The amendment is sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendment affects Texas Occupations Code, Chapter 502.

§801.351. Informal Settlement Conference.

(a) Informal disposition of a [~~any~~] complaint as prescribed in §801.296 of this title (relating to Complaint Procedures) [~~or contested case involving a licensee or an applicant for licensure~~] may be made through an informal settlement conference [~~held to determine whether an agreed order may be approved~~].

[~~(b) If the executive director or the ethics committee determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.~~]

(b) [~~(c)~~] An informal settlement conference is [~~shall be~~] voluntary and is [~~shall~~] not [~~be~~] a prerequisite to a formal hearing.

(c) [~~(d)~~] The executive director will schedule [~~shall decide upon~~] the time, date and place of the informal settlement conference, and provide written notice to the respondent or respondent's attorney. [~~licensee or applicant. Notice shall be provided no less than ten days prior to the date of the conference to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.~~]

(1) Notice will be provided no less than ten calendar days before the date of the conference to the last known address of respondent or respondent's attorney by certified or registered mail or by personal delivery. The ten days begin on the date of mailing or delivery. The respondent or respondent's attorney may waive the ten-day notice requirement.

(2) The notice will inform the respondent or respondent's attorney of the name and style of the case, the date, time, and place of the informal settlement conference, and a short statement of the purpose of the informal settlement conference as well as a reference to this section of board rules.

(3) The notice of informal settlement conference includes the following statement in bold, capital letters of at least 10-point type: "Failure to appear. Your failure to appear for the informal settlement conference, in person or by representative, on the above date, at the appointed time and place, will be considered a waiver of your right to an informal settlement conference and a formal hearing. The factual allegations will be deemed admitted as true and the proposed disciplinary action will be imposed by default."

[~~(e) A copy of the board's rules concerning informal conference may be enclosed with the notice of the informal conference. The notice shall inform the licensee or applicant of the following:~~]

[~~(1) that the licensee may be represented by legal counsel;~~]

[~~(2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;~~]

[~~(3) that at least one member of the ethics committee members shall be present;~~]

[~~(4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;~~]

[~~(5) that the licensee's or applicant's attendance and participation is voluntary; and~~]

[~~(6) that the complainant and any client involved in the alleged violations may be present.~~]

(d) [~~(f)~~] Staff will send [~~The~~] notice of the informal settlement conference [~~may be sent~~] to the complainant at his or her last known address or by personal delivery. [~~personally delivered to the complainant.~~] The complainant will [~~may~~] be informed [~~that~~] he or she

may appear and testify or may submit a written statement for consideration at the informal settlement conference.

(e) The respondent's or respondent's attorney's attendance and participation in an informal settlement conference is voluntary.

(f) [~~(g)~~] At least one board member will attend [~~of the ethics committee shall be present at~~] an informal settlement conference.

(g) The board's legal counsel or an attorney from the Office of the Attorney General will attend each informal settlement conference. The board member(s) or staff may ask the attorney for assistance at any time during the informal settlement conference. During periods of consultation between the board member(s), staff, and the board's legal counsel, all other attendees may be asked to leave the room.

(h) The conference is [~~shall be~~] informal and does [~~shall~~] not follow the procedures established in this chapter for contested cases and formal hearings.

(i) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, the Administrative Procedure Act (APA), and other applicable law.

(j) At the discretion of the board member(s) or executive director, a recording may be made of some or all of the informal settlement conference.

(k) [~~(i)~~] The board member(s), the board's legal counsel, staff, or respondent or respondent's attorney [~~licensee or applicant, the licensee's or applicant's attorney, ethics committee members, the board's legal counsel, and the executive director,~~] may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(l) The complainant is not a party in the informal settlement conference but, if attending, will be offered the opportunity to speak. Any written statement submitted by the complainant will be reviewed at the conference.

~~[(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each informal conference. The ethics committee members or executive director may call upon the attorney at any time for assistance in the informal conference.]~~

~~[(k) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, the Administrative Procedure Act (APA), and other applicable law.]~~

~~[(l) At the discretion of the executive director or the ethics committee members, a recording may be made of some or all of the informal conference.]~~

(m) The [~~complainant and others present at the request of the complainant, members of the board, the~~] licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the informal settlement conference, except consultation between the board members, staff, and the board's legal counsel. Subject to the discretion of the board, witnesses or other attendees[~~, other than the complainant,~~] may be allowed in the meeting only during their testimony.

~~[(n) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.]~~

(n) [~~(o)~~] At the conclusion of the informal settlement conference, the board member(s), the board's legal counsel, or staff [~~ethics committee member(s) or executive director~~] may make a proposal for an informal settlement of the complaint [~~ or contested case~~]. [~~The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The ethics committee member(s) or executive director may also recommend that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, or that the investigation be closed.~~]

(o) [~~(p)~~] The respondent or respondent's attorney [~~licensee or applicant~~] may either accept or reject the settlement recommendations at the conference. [~~If the recommendations are accepted, an agreed order shall be prepared by the executive director, executive director's designee or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.~~]

(1) If the recommendations are accepted, staff will prepare and send an agreed order to the last known address of the respondent or respondent's attorney by certified or registered mail or by personal delivery. The agreed order contains findings of fact and conclusions of law.

(A) The respondent will sign and return the order within ten calendar days of his or her receipt of the order. If the respondent or respondent's attorney fails to return the signed order within the stated time period, the inaction will constitute rejection of the settlement recommendations.

(B) The executive director will place the agreed order on the board agenda; the agreed order constitutes only a recommendation for approval by the informal settlement conference board member(s), board's attorney, or staff.

(C) Staff will send notice of the board meeting to the last known address of the respondent or respondent's attorney by certified or registered mail or by personal delivery. The meeting notice will include the date, time, and place of the board meeting. Attendance by the respondent or respondent's attorney is voluntary.

(D) The executive director will present the agreed order with the respondent's signature to the board for review. The board may not change the terms of a proposed order and may only approve or reject an agreed order unless the respondent or respondent's attorney is present at the board meeting and agrees to other terms proposed by the board.

(i) Upon an affirmative majority vote, the board executes the agreed order approving the accepted settlement recommendations.

(ii) If the board rejects a proposed agreed order, the matter is referred to the executive director for appropriate action.

(E) An agreed order is not effective until approved and executed by the board. The order is then effective in accordance with the APA, §2001.054(c).

(2) If the respondent or respondent's attorney rejects the proposed settlement, the matter will be referred to the executive director for appropriate action.

~~[(q) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.]~~

~~[(r) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for~~

its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by board.]

[(s) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.]

[(t) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order and may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.]

[(u) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.]

[(v) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA, §2001.054(c).]

(p) [(w)] A licensee's opportunity for an informal settlement conference under this subchapter satisfies [shall satisfy] the requirement of the APA, §2001.054(c).

(q) [(x)] The board may order a respondent [license holder] to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the respondent [license holder] for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

[(y) The following statement shall be included in to the notice of informal conference, in bold letters of at least 10 point type:]
[Figure:22 TAC §801.351(y)]

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

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SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.362 - 801.364

The amendments are sanctioned by the following sections of the Texas Occupations Code, which authorize the board to adopt rules: §502.152, to establish the board's procedures; §502.153, to set fees reasonable and necessary to cover the costs of administering this chapter; §502.1565, to comply with Chapter 53, Consequences of Criminal Conviction; §502.158, to standardize information concerning complaints made to the board; §502.202, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board; §502.204, concerning the investigation of a complaint filed with the board; §502.2541, to administer a jurisprudence examination; §502.2545, to administer a waiver of examination for certain applicants; and §502.258, to provide for the issuance of a temporary license.

The amendments affect Texas Occupations Code, Chapter 502.

§801.362. Proper Notice.

(a) For purposes of contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

[(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.]

(b) [(c)] The notice of formal hearing will include the following statement [shall be attached to the notice of hearing or notice of informal conference,] in bold, capital letters of at least 10-point type.[:]
Figure: 22 TAC §801.362(b)
[Figure: 22 TAC §801.362(c)]

§801.363. Default.

(a) For purposes of this section, default means the failure of the respondent to appear in person, or by legal representative, or by telephone on the day and at the time set for hearing in a contested case or informal settlement conference[, or the failure to appear by telephone,] in accordance with the notice of hearing or notice of informal settlement conference.

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) will [shall] proceed in the party's absence and such failure to appear entitles the board [shall entitle the department] to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ will [shall] grant any motion by the board [department] to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal settlement conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) The respondent must file a [A] motion to set aside the default order and reopen the record [shall be filed] with the board before [prior to] the time [that] the order of the board becomes final, pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not [to be] considered a

substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(f) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown in the board's [~~on the department's~~] records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence [~~that~~] the notice of hearing was sent by certified or registered mail or personal delivery[~~, return receipt requested,~~] to the defaulting party's last known address.

§801.364. Action after Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) Staff will [~~The department shall~~] reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Staff will send written notice [~~Notice~~] of any reopened hearing [~~shall be provided~~] to all previously designated parties, by certified or registered mail or personal delivery. [~~mail, return receipt requested.~~]

(b) Final orders or decisions.

(1) The final order or decision is [~~of the department will be~~] rendered by the board or its designee.

(2) All final orders or decisions will [~~shall~~] be in writing and will [~~shall~~] set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an Administrative Law Judge's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders will [~~shall~~] be signed by the board chair[~~,~~] or designee.

(c) Motion for rehearing. A motion for rehearing is [~~shall be~~] governed by the APA or other pertinent statute and must [~~shall~~] be filed with the board.

(d) Appeals. All appeals from final [~~department~~] orders or decisions are [~~shall be~~] governed by the APA or other pertinent statute and must [~~shall~~] be addressed to the board.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 525. AUDIT REQUIREMENTS FOR SOIL AND WATER CONSERVATION DISTRICTS

SUBCHAPTER A. AUDITS OF DISTRICTS

31 TAC §525.5, §525.8

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §525.5 concerning Audit Exemptions and §525.8 concerning Compliance Contingencies for Soil and Water Conservation Districts (SWCDs).

Background and Purpose

Many SWCDs have small operating budgets. The cost of audits performed in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants as mandated by §201.080(d), Agriculture Code and §525.4 of these rules. Certified public accountants or public accountants holding permits from the Texas State Board of Public Accountancy must include the auditor's opinion as to the fair presentation of the financial statements taken as a whole. The financial burden on SWCDs continues to increase and, in some cases, amounts to a double-digit percentage of the entire operating budget of SWCDs.

Section-by-Section Summary

The amendments to §525.5(a)(2) and §525.5(b)(2) may provide SWCDs some financial relief from the increasing cost of certified audits which may outweigh the benefits of auditing small operating accounts. The amendment to §525.8(c)(3) would grant the Executive Director or his designee the authority to exempt the hold of funds requirement, as found in §525.8(a)(1) and (2) and (c)(1) and (2), on a SWCD if it creates an undue hardship to the operation of the SWCD due to extenuating circumstances, such as, but not limited to, natural disasters.

The proposed amendment to §525.5(a)(2) would increase a SWCD's ceiling of gross revenue from $40,000.00 in any year of the biennial period to a maximum of $75,000.00. This adjustment would make the requirement for an accountant compilation and review of SWCD records more cost effective.

The proposed amendment to §525.5(b)(2) would increase a SWCD's ceiling of gross state revenue from $100,000.00 to $250,000.00 in any year of the biennial period. This adjustment would make the requirement for an accountant compilation and review of SWCD records more cost effective.

New subsection §525.8(c)(3) states that a SWCD's hold status will be removed if: (1) it is in compliance or (2) if the Executive Director or his designee temporarily exempts the hold requirements on a SWCD if it creates undue hardship due to extenuating circumstances, such as, but not limited to natural disasters.

Fiscal Note

Kenny Zajicek, COO/CFO for the State Board, has determined that for the first five-year period the proposed amendments will be in effect, there will be no anticipated fiscal implications for

state or local governments as a result of enforcing or administering the proposed amendments because they do not impose an increased cost to those SWCDs which would still be required to obtain a certified audit.

Because there is no effect on local economies for the first five years that the proposed amendments are in effect, no local employment impact statement is required under Texas Government Code §2001.022.

The State Board does not regulate individuals, so the proposed amendments do not impose a cost on a person. The amendments do not impose a cost on another state agency or a special district; therefore, it is not subject to Texas Government Code §2001.0045.

Government Growth Impact

During the first five years that the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or eliminate existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; and would not positively or negatively affect the state's economy. The proposed rule amendments would limit or reduce its application to those SWCDs that have a gross state revenue below the amended dollar amounts stated in §525.5(a)(2) and (b)(2) of these rules. Because the State Board does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposed amendments' applicability.

Public Benefit/Cost Notice

Mr. Zajicek has determined for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing or administering the rule will be to decrease the financial burden for those SWCDs with minimal operating budgets. There will be no anticipated economic costs to persons required to comply with this rule. There will be no anticipated effect on small businesses or local economies.

Request for Public Comment

Comments on the proposed amendments may be submitted to Mel Davis, Policy Advisor/Special Projects Coordinator, Texas State Soil and Water Conservation Board; 1497 Country View Lane, Temple, Texas 76504, within 30 days of publication of these proposed amendments in the *Texas Register.* Comments may also be submitted via fax to (254) 773-3311 or via email to mdavis@tsswcb.texas.gov.

Statutory Authority

The amendments are proposed under Texas Agriculture Code, Title 7, Chapter 201, §201.020 which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under Chapter 201, Texas Agriculture Code and §201.022, which authorizes the State Board to assist SWCDs in carrying out programs and powers.

No other code, article or statutes are affected by this amendment.

§525.5. Audit Exemption.

(a) A district may elect to file an annual financial statement as of August 31 of each year in lieu of the district's compliance with §525.3 of this subchapter (relating to Duty to Audit) provided:

(1) the district had no long term (more than one year) liabilities outstanding during the biennial period other than rent/lease contracts;

(2) the district did not have gross state revenues in excess of $75,000.00 [~~$40,000~~] in any year of the biennial period;

(3) the district's State Fund cash, receivables, and short term investments balances were not in excess of $50,000 in any year of the biennial period;

(4) the district is not otherwise required to have its accounts and records audited in compliance with a funding agreement with any federal, county, or other agency; and

(5) the district is not otherwise required at the discretion of the State Board to have its accounts and records audited under Agriculture Code of Texas, §201.080, Records, Reports, Accounts, and Audits.

(b) A district may elect to file a compilation and review with required procedures as of August 31 of each year in lieu of the district's compliance with §525.3 of this subchapter provided:

(1) the district has no more than one long term (more than one year) liabilities outstanding during the biennial period other than rent/lease contracts and that the one liability consists of real property utilized by the district as its [~~it's~~] primary office location;

(2) the district did not have gross state revenues in excess of $250,000.00 [~~$100,000~~] in any year of the biennial period;

(3) the district's State Fund cash, receivables, and short term investments balances were not in excess of $50,000 in any year of the biennial period;

(4) the district is not otherwise required to have its accounts and records audited in compliance with a funding agreement with any federal, county, or other agency;

(5) the district is not otherwise required at the discretion of the State Board to have its accounts and records audited under Agriculture Code of Texas, §201.080, Records, Reports, Accounts, and Audits; and

(6) the person who performs a compilation and review shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(c) The annual financial statement, compilation and review, or audit must be reviewed and approved by the district directors and so recorded in the minutes of the board meeting at which such action was taken.

(d) The annual financial statement, compilation and review, or audit must be accompanied by an original affidavit signed by the district's current chairman, vice chairman, and secretary attesting to the accuracy and authenticity of the financial report.

(e) Districts governed by this section are subject to periodic audits by the State Board.

§525.8. Compliance Contingencies.

(a) An annual financial statement must be filed no later than 60 days after August 31 of each fiscal year.

(1) A District's funds will be considered out of compliance and placed on "hold" status if an annual financial statement is not received by the State Board by October 30 of each fiscal year.

(2) A District's funds will be placed on "hold" status if an [a] annual financial statement has been received by the due date but the District has not corrected errors by December 31 of each fiscal year.

(b) An audit must be filed no later than 120 days after August 31 of each even numbered year.

(1) A District's funds will be considered out of compliance and placed on "hold" status if an audit is not received by the State Board by January 1 of each odd numbered year.

(2) A District's funds will be placed on "hold" status if an audit has been received by the due date but the District has not corrected errors by February 28 of odd numbered years.

(c) A compilation and review must be filed no later than 120 days after August 31 of each year.

(1) A District's funds will be considered out of compliance and placed on "hold" status if a compilation and review is not received by the State Board by January 1.

(2) A District's funds will be placed on "hold" status if the compilation and review has been received by the due date but the District has not corrected errors by February 28 of each fiscal year.

(3) A district's hold status will be removed upon becoming compliant, or the Executive Director, or designee, temporarily exempts the hold requirements on a district if it creates an undue hardship due to extenuating circumstances; such as, but not limited to natural disasters.

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

Filed with the Office of the Secretary of State on November 30, 2018.

TRD-201805112
Liza Parker
Policy Analyst
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 13, 2019
For further information, please call: (254) 773-2250 x247

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.18

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC Chapter 145, Subchapter A, §145.18, concerning Action upon Review; Extraordinary Vote (HB 1914). The amendment is proposed to correct a typographical error in the posting.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this rule.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment to this section will be to bring the rule into compliance with current board practice and current statutory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendment is in effect, the amendment will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code Sections 508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to make rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and Section 508.045 authorize the Board to make reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or to mandatory supervision and to act on matters of release to parole or to mandatory supervision. Section 508.141 provides the board authority to make policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§145.18. Action upon Review; Extraordinary Vote (HB 1914).

(a) This section applies to any offender convicted of a capital offense with a life sentence, who is eligible for parole, or convicted of or serving sentence for an offense under Section 22.021, Penal Code. All members of the Board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the Board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the Board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the Board has the following voting options available:

(A) FI-1--Release the offender when eligible;

(B) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(C) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9); or

(D) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI). In no event shall the specified date be set more than three years from the current panel decision date.

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36, 60, 84 or 120 months following the panel decision date; or

(B) SA--The offender's minimum or maximum expiration date is less than 120 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the Board panel:

(1) CU/FI (Month/Year-Cause Number)--A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number)--Deny release and set the next review date for 60, 84 or 120 months following the panel decision date; or

(3) CU/SA (Month/Year-Cause Number)--Deny release and order serve-all if the offender is within 120 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the projected release date, the voting options are the same as those listed in subsections (a) and (b) of this section. If TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case shall be referred to a three-member parole panel within 30 days of the offender's projected release date for consideration for release to mandatory supervision using the following options:

(1) RMS--Release to mandatory supervision; or

(2) DMS (Month/Year)--Deny release to mandatory supervision and set for review on a future specific month and year. The next mandatory supervision review date shall be set one year from the panel decision date.

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full Board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the Board:

(A) Approve MRIS--The Board shall vote F1-1 and impose special condition "O" -"The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the Board shall provide appropriate reasons for the decision to approve MRIS; or

(B) Deny MRIS--The Board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the Board.

(e) If a request for a special review meets the criteria set forth in §145.17(f) of this title (relating to Action upon Special Review--Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full Board. The Presiding Officer shall determine the order of the voting panel. Voting options are the same as those in subsections (a) - (c) of this section.

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

Filed with the Office of the Secretary of State on November 29, 2018.

TRD-201805107
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 463-8216

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2, §800.3

The Texas Workforce Commission (TWC) proposes amendments to §800.2 and §800.3, Chapter 800, relating to General Administration.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 800 is amended to align §800.3 with Texas Government Code §2161.002, as required by statute. Section 800.3 relates to TWC's provisions for helping historically underutilized businesses (HUBs) bid for competitive contracts.

Pursuant to Government Code §2161.003, all state agencies are required to adopt the State Comptroller rules described in Texas Government Code §2161.002, relating to increasing agency contract awards to HUBs. Effective September 1, 2016, administration of vocational rehabilitation services was transferred from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC. To ensure continuity and avoid disruption of services to customers upon transfer, the administrative rules shared by all DARS programs were duplicated into Chapter 850 of this title, relating to Vocational Rehabilitation Services Administrative Rules and Procedures. Chapter 850 is being amended in a separate rulemaking to delete unneeded or outdated references and to move certain provisions to more appropriate locations. The amendment includes moving the definition of "HUB" to §800.2 and moving the language being repealed in §850.23, Adoption of Rules, to §800.3.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2 is amended to add the definition of "Historically Underutilized Business" as it applies to §800.3. In addition, all citations to the superseded Workforce Investment Act (WIA) are updated to reflect the Workforce Innovation and Opportunity Act (WIOA).

§800.3. Historically Underutilized Businesses

Section 800.3 is amended to remove an explanation of TWC's provisions for helping HUBs bid for competitive contracts. The section is replaced with wording previously in effect at §850.23, incorporating TWC's formal adoption of the rules of the Texas Comptroller of Public Accounts, consistent with Texas Government Code §2161.002 relating to HUBs.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align §800.3 with Texas Government Code §2161.002, as required by statute. Section 800.3 relates to TWC's provisions for helping HUBs bid for competitive contracts.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact on employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to align §800.3, related to TWC's provisions for helping HUBs bid for competitive contracting awards, with Texas Government Code §2161.002, as required by statute.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on June 14, 2018. TWC also conducted a conference call with Board executive directors and Board staff on June 22, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed amendments may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The amendments are proposed under Texas Government Code §2161.003 and Texas Labor Code §§301.0015 and 302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed amendments affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult Education and Literacy (AEL)--Academic instruction and education services below the postsecondary level that increase an individual's ability to [~~Services designed to provide adults with sufficient basic education that enables them to effectively~~]:

(A) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent [~~acquire the basic educational skills necessary for literate functioning~~];

(B) participate in job training and retraining programs or transition to postsecondary education and training; and

(C) obtain and retain employment. [~~; and~~]

[~~(D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.~~]

(2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code [~~Annotated~~], Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, [~~or~~] unless otherwise defined, relating to the Texas Workforce Commission [~~that are adopted after February 1, 2001~~].

(3) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Innovation and Opportunity Act (WIOA) §107 (29 USC §3122) [~~Workforce Investment Act §117 (29 U.S.C.A. §2832)~~], including those functions required of a youth standing committee [~~Youth Council~~], as provided for under WIOA §107(i) [~~Workforce Investment Act §117(i)~~]. The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission [~~that are adopted after February 1, 2001~~]. Boards are subrecipients as defined in OMB Circular A-133.

(5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIOA [~~WIA~~], and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(6) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under Temporary Assistance for Needy Families (TANF) (42 USC 601 et seq.) [~~TANF (42 U.S.C.A. 601 et seq.)~~] to assist individuals [~~persons~~] who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, [~~or~~] unless otherwise defined, relating to the Texas Workforce Commission [~~that are adopted after February 1, 2001~~].

(8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. ([~~The~~] Wagner-Peyser Act of 1933 (Title 29 USC [~~U.S.C.~~], Chapter 4B) as amended by WIOA (PL 113-128)). [~~the Workforce Investment Act of 1998 (PL 105-220))~~]

(10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual [~~a person~~] delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(11) Historically Underutilized Business (HUB)--A business entity as defined in 34 TAC §20.282 that is certified by the State of Texas, has not exceeded the standards for size established by 34 TAC §20.294, and has established Texas as its principal place of business.

(12) [~~(11)~~] Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under WIOA §106 and §189(i)(1) (29 USC §3121 and §3249) [~~Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939)~~].

(13) [~~(12)~~] One-Stop Service Delivery Network--A one-stop--based network under which entities responsible for administering separate workforce investment, educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions.

(14) [~~(13)~~] Performance Measure--An expected performance outcome or result.

(15) [~~(14)~~] Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(16) [~~(15)~~] Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;

(E) Workforce Innovation and Opportunity Act (WIOA) Vocational Rehabilitation [~~Project RIO~~]: October 1 - September 30;

(F) [~~(E)~~] Trade Act services: October 1 - September 30;

(G) [~~(F)~~]WIOA [~~Workforce Investment Act (WIA)~~] Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;

(H) [~~(G)~~] WIOA [~~WIA~~] Alternative Funding for Statewide Activities: October 1 - September 30;

(I) [~~(H)~~]WIOA [~~WIA~~] Alternative Funding for One-Stop Enhancements: October 1 - September 30; and

(J) [~~(I)~~] WIOA, Adult Education and Literacy: July 1 - June 30.

[~~(16) Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Juvenile Justice Department incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306; Texas Government Code §2308.312; and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Juvenile Justice Department.~~]

(17) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 USC §2011) [~~(7 U.S.C.A. §2011)~~], and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.

(18) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (7 USC §2011 et seq.) [~~(7 U.S.C.A. §201.1 *et seq.*)~~] and the TANF statutes and regulations (42 USC §601 et seq.) [~~(42 U.S.C.A. §601 *et seq.*~~], 45 Code of Federal Regulations (CFR) [~~(C.F.R.)~~] Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

(19) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR [~~C.F.R.~~] Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.

(20) TWIC--Texas Workforce Investment Council, appointed by the governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board, as provided for under WIOA §101(e) (29 USC 3111(e) [~~Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e))~~]. In addition, pursuant to WIOA §193(a)(5) (29 USC 3253(a)(5)) [~~the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5))~~], TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105.

(21) WIOA--Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC §3101 et seq.). [~~WIA--Workforce Investment Act (PL 105-220, 29 U.S.C.A. §2801 *et seq.*).~~] References to WIOA [~~WIA~~] include references to WIOA [~~WIA~~] formula-allocated funds unless specifically stated otherwise.

(22) WIOA [~~WIA~~] Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIOA adult, dislocated worker, and youth [~~WIA Adult, Dislocated Worker and Youth~~] (excluding the secretary's [~~Secretary's~~] and governor's reserve funds and rapid response funds).

(23) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

§800.3. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the Agency adopts the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services at 34 TAC Chapter 20, Subchapter D, Division D, Historically Underutilized Businesses. These rules were promulgated by the Texas Comptroller of Public Accounts, as required under Texas Government Code §2161.002.

[(a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001(2) in their efforts to participate in contracts to be awarded by the Commission. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in 34 Texas Administrative Code (TAC), Part 1, Chapter 20, Subchapter B (relating to the Historically Underutilized Business Program).]

[(b) The Commission shall take positive steps to inform HUBs of opportunities to provide identified state services that it determines may best be provided through a competitive process.]

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

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES

40 TAC §800.100, §800.101

The Texas Workforce Commission (TWC) proposes adding the following new subchapter to Chapter 800, relating to General Administration: Subchapter C. Savings Incentive Program for State Agencies, §800.100 and §800.101.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 800 is being amended to add rules on implementing the Savings Incentive Program for State Agencies, as required by amendments made to Texas Government Code §2108.103(f) under Senate Bill (SB) 132 enacted by the 85th Texas Legislature, Regular Session (2017).

Effective September 1, 2017, SB 132 changed the Savings Incentive Program in Texas Government Code, Chapter 2108, to remove the 1 percent cap on funds allowed to be retained by an agency and to allow the agency to retain one-half of the savings, with the other half being returned to general revenue.

SB 132 also:

--allows a state agency to spend the savings on bonuses, divided equally among eligible employees who directly contributed to the agency's savings or who worked in the agency department responsible for the savings;

--establishes a tiered bonus structure that is based on the percentage of the agency's savings;

--prohibits a state agency from giving the bonuses to agency employees in upper management positions;

--requires an agency to pay off its general obligation bonds before issuing bonuses; and

--limits an agency's spending to an activity or expense that does not create new services or expand services or will not require ongoing funding at a later date.

Currently, TWC has no appropriated undedicated general revenue and, therefore, has no current savings to retain. However, consistent with revisions to Chapter 2108 of the Texas Government Code, this section will govern any potential future savings realized from appropriated undedicated general revenue.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

TWC proposes adding Subchapter C, Savings Incentive Program for State Agencies, as follows:

§800.100. Definitions

New §800.100 is added to define terms that apply to the Savings Incentive Program for State Agencies.

§800.101. Procedure

New §800.101 is added to explain TWC's procedure for implementing the Savings Incentive Program for State Agencies. As required under Texas Government Code, Chapter 2108, the procedure includes verification by the comptroller of the amount of savings, retention and usage of the savings by TWC, and the awarding of bonuses by TWC.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25

percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to add rules on implementing the Savings Incentive Program for State Agencies as required by amendments made to Texas Government Code §2108.103(f) under SB 132, enacted by the 85th Texas Legislature, Regular Session (2017).

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Interim Director of Labor Market and Career Information, has determined that there is no significant negative impact on employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to more effectively incentivize TWC staff to create savings for the agency.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on June 14, 2018. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

STATUTORY AUTHORITY

The rules are proposed under Texas Government Code §2108.103(f), which requires state agencies to adopt implementing rules. In addition, Texas Labor Code §301.0015(a)(6) and §302.002(d), provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.100. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) General appropriations act--a legislative act appropriating money for the operation of state government.

(2) General obligation bond--a bond issued on behalf of the State of Texas, the repayment of which is guaranteed by the full faith and credit of the State of Texas and which has been authorized by the Texas Constitution. For purposes of this subchapter, the term does not include an unemployment insurance trust fund bond.

(3) General revenue-dedicated--a subset of general revenue that is dedicated as a result of legislative action and may be appropriated only for the purpose to which the revenue is statutorily dedicated.

(4) Undedicated general revenue--general revenue that does not fall under the definition of "general revenue-dedicated" and can be transferred for another use through a special provision to the general appropriations act.

(5) Upper management--includes commissioners, executive director, deputy executive director, division directors, and deputy division directors.

§800.101. Procedure.

(a) In any fiscal year, if the agency spends less of the undedicated general revenue derived from nonfederal sources than is appropriated to it by the general appropriations act, the agency shall notify the comptroller of the savings before October 30 following the end of the fiscal year in which the savings are realized.

(b) Upon verification of savings by the comptroller, the agency may retain one-half of the verified amount of savings.

(c) The verified amount of savings may be spent only on an activity or expense that does not:

(1) create new or expanded services; or

(2) require ongoing funding at a later date.

(d) Of the verified savings retained by the agency, one-half:

(1) shall be used to make additional principal payments for general obligation bonds issued by the agency or on behalf of the agency by the Texas Public Finance Authority; or

(2) may be used to provide bonuses to a qualifying employee or employees of the agency, as set forth in Texas Government Code §2108.103(c)(2)(A) - (C), if there are no outstanding general obligation bonds issued by the agency or on behalf of the agency by the Texas Public Finance Authority.

(e) In determining whether savings have been realized, the Agency's Finance department will consider the difference between lapsed funds and verifiable savings that are based on proactive efforts by an Agency employee or employees to reduce operational and other costs to the Agency.

(f) If verified savings under this section are not needed for other Agency priorities, the savings may be awarded as bonuses as set out in Texas Government Code §2108.103(c)(2).

(g) The Agency's Finance department will notify the Agency's executive director of the savings that may be distributed to provide bonuses.

(h) The Agency's executive director may implement bonuses in accordance with the tiered bonus structure, as set forth in Texas Government Code §2108.103(d)(1) - (4). Before awarding the bonuses, the executive director will:

(1) ensure that all financial obligations are met under Texas Government Code §2108.103(c)(2); and

(2) verify that each employee who receives a bonus:

(A) is a current full-time equivalent employee of the Commission;

(B) worked for the Commission as a full-time equivalent employee for the entire fiscal year in which the savings were realized; and

(C) is directly responsible for or worked in a department, office, or other division within the Commission that is responsible for the savings realized.

(i) Employees of the Agency who serve in an upper management position are prohibited from receiving a bonus under this section.

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

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CHAPTER 854. BUSINESS ENTERPRISES OF TEXAS

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 854, relating to the Division for Blind Services:

Subchapter A. General Provisions and Program Operations, §§854.10 - 854.12

Subchapter B. License and Assignments, §§854.20 - 854.24

Subchapter C. Expectations of TWC and Managers, §§854.40 - 854.43

Subchapter D. BET Elected Committee of Managers, §854.60 and §854.61

Subchapter E. Action Against a License, §§854.80 - 854.83

TWC proposes the repeal of the following sections of Chapter 854, relating to the Division for Blind Services:

Subchapter N. Business Enterprises of Texas, §§854.200 - 854.217

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the BET program is to provide training and remunerative employment opportunities on state, federal, and private properties throughout Texas for Texans who are legally blind. TWC is the state agency authorized to administer the BET program, which operates under the authority of the federal Randolph-Sheppard Act (20 USC §107 et seq.), implementing regulations (34 CFR §395.1 et seq.), and Chapter 355 of the Texas Labor Code. Participants operate vending and food services on state, federal and other properties throughout Texas, including office buildings, prisons, military installations, and highway safety rest areas. All applicants for the program are qualified by and referred to BET by TWC Vocational Rehabilitation (VR) Services. Although BET is not a VR program, it provides competitive employment for VR customers and successful case closures for the VR program.

BET program managers collaborate with the federally mandated Elected Committee of Managers (ECM), composed of elected licensed managers of BET facilities, to evaluate rules and policies and to make recommendations. The BET rules were last revised in 2012 under BET's predecessor agency, the Texas Department of Assistive and Rehabilitative Services (DARS). As required by §854.212(d), before considering these proposed rule changes, TWC requested that the ECM participate in rule drafting workshops conducted by the BET director to deliberate regarding these proposed rules. Meetings were held between the ECM and the BET director to obtain the ECM's recommendations on the proposed rule revisions and to solicit ECM proposals on program improvement.

The TWC Chapter 854 Division for Blind Services proposed rule amendments include changes to clarify procedures, update program operations, and improve operational transparency. Some of the revisions are made in response to operational enhancements resulting from TWC's adoption of Rapid Process Improvement methods. Other changes are designed to modernize the program by addressing tax lien responsibilities and the monitoring of participants' compliance with state and federal tax laws. Additional operational transparency is added by clarifying the el-

igibility criteria for participation in the BET program and the opportunities for assignment and advancement of licensed BET managers. Finally, because the ECM is an elected committee composed of the licensed managers of BET facilities who vote on career advancement assignment opportunities, it is important to ensure transparency and avoid the appearance of conflict of interest. Revisions are proposed to enhance fair and equal treatment of program participants by providing a framework for addressing conflicts of interest.

Pursuant to Texas Labor Code §352.101, TWC has integrated legacy DARS VR programs--VR for individuals with visual impairments (Blind Services) and VR for individuals with other disabilities (Rehabilitation Services)--into a single VR program. The integration has resulted in the repeal of various subchapters within Chapter 854. The BET rules are currently in Chapter 854, Subchapter N, Division for Blind Services, and will be the only subchapter in Chapter 854. Accordingly, the BET rules will be renumbered and moved into Subchapter A, which is renamed to refer solely to the BET program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

TWC proposes adding the following new sections to Subchapter A:

§854.10. Definitions

New §854.10 replaces repealed §854.202 and updates many references to DARS and its organizational structure, and replaces the word "person" with "individual." DARS DBS definitions are removed. Additional necessary definitions are added, such as those for "immediate family" and "substantial interest," to assist in the rules on conflict of interest. "Application for Training" was added since this is the first requirement in being considered for a license. One definition regarding instruction by TWC staff members was moved and renamed, but the definition remained unchanged.

§854.11. General Policies

New §854.11 replaces repealed §854.203 and revises many references to DARS, its legal authority and its organizational structure, replacing the word "person" with "individual" and "consumer" with "customer." Subcontracting is clarified to be under the purview and approval of TWC. The rule also establishes a time frame of six months as the maximum for a subcontractor to be assigned to a facility. The modification of this rule reflects the current operation of the program and improves compliance with the governing statutes. The BET director's authorized amount of funds on an emergency basis was increased, and more detail was provided on the type of incident that may require emergency funding. The process for designating the temporary management of an unassigned facility was revised to reflect how a manager is evaluated to obtain the assignment and the role of the BET management and the local ECM in determining who is assigned as the temporary manager. To ensure sound fiscal operations and adherence to state and federal law, the manager's compliance with state and federal tax laws in running a facility is imperative.

§854.12. Consultants

New §854.12 replaces repealed §854.204 and updates its provisions to remove the BET administrator role. The rule is further updated to reflect the change from DARS DBS to TWC. Subsection (d) is modified to specify that the state procurement requirements will be followed when entering into a contract for a consultant and using facility proceeds to pay the consultant.

SUBCHAPTER B. LICENSE AND ASSIGNMENTS

TWC proposes new Subchapter B, License and Assignments, as follows:

§854.20. Eligibility and License Application Process

New §854.20 replaces repealed §854.205 and establishes the eligibility criteria that a customer must meet to apply for the BET training component, which is a prerequisite for a BET license. Proficiency in math, reading, writing, and adaptive technology must be demonstrated through an assessment administered by the Criss Cole Rehabilitation Center (CCRC), as found in TWC Chapter 856 Vocational Rehabilitation Services. BET is an employment outcome for customers who are in the TWC VR program, as found in Chapter 856. The regional VR manager must approve a customer applying for the BET training program.

§854.21. BET Licenses and Continuing Education Requirement

New §854.21 updates its §854.206 provisions to revise many references to DARS and its organizational structure and to replace "person" with "individual." The rules addressing the Continuing Education Requirement of a licensee were moved from §854.205 and revised solely to reflect the agency name change from "DARS DBS" to "TWC."

§854.22. Initial Assignment Procedures

New §854.22 replaces repealed §854.207 and updates its provisions to replace "person" with "individual," in addition to adding a requirement in subsection (b)(5) that the licensee must be in compliance with state and federal tax laws in order to receive an initial assignment.

§854.23. Career Advancement Assignment Procedures

New §854.23 replaces repealed §854.207 and updates its provisions to address the selection, transfer, and promotion for BET managers. The existing rule specifies eligibility requirements for licensees to meet in order to apply for an available facility. The added eligibility requirements include facility host requirements, such as criminal background checks, drug tests, and any other host requirements. To ensure sound fiscal operations and adherence to state and federal law, the manager's compliance with state and federal tax law is imperative and is a requirement for an advanced assignment. The rule is further updated to reflect the agency name change from DARS DBS to TWC.

§854.24. Career Advancement Assignment Application

New §854.24 replaces repealed §854.207 and updates its provisions to include electronic submission of the application, notice of the available facility, and notice of the interview date, place, and time. The rule is further updated to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

TWC proposes new Subchapter C, Expectations of TWC and Managers, as follows:

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables

New §854.40 replaces repealed §854.208 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." The updates clarify that TWC is the owner of the fixtures, furnishings, and equipment. TWC establishes expectations of the managers to maintain and sanitize the equipment and document maintenance performed. Managers may face administrative action on their licenses if they do not follow the TWC upkeep and maintenance schedule.

§854.41. Set-Aside Fees

New §854.41 replaces repealed §854.209 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." The current rate of 5 percent of net proceeds was added into the provisions. Subsection (e) was added to clarify that if ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then the appeal process in §854.82 may be used.

§854.42. Duties and Responsibilities of Managers

New §854.42 replaces repealed §854.210 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Subsection (f) is removed because this DARS DBS requirement is not consistent with TWC operation of the BET program. As the owner of the equipment, TWC's purchasing of insurance will ensure adequate protection coverage for both the state-owned equipment and the host facility. An electronic mail address was added to subsection (l)(2) as most of the communication with the managers from TWC is electronic. In subsection (o), assurances were added that materials removed during an audit or review will be returned to the facility within 90 business days to avoid disrupting the business practices of the BET manager. New subsection (p) clarifies the responsibility of managers to maintain liability insurance coverage.

§854.43. Responsibilities of the Texas Workforce Commission

New §854.43 replaces repealed §854.211 and updates its provisions to reflect the agency change from DARS DBS to TWC.

SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

TWC proposes new Subchapter D, BET Elected Committee of Managers, as follows:

§854.60. BET Elected Committee of Managers' Duties and Responsibilities

New §854.60 replaces repealed §854.212 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Subsection (a) has been updated to ensure compliance with 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard Act.

§854.61. BET Elected Committee of Managers' Conflict of Interest.

New §854.61 specifies when a conflict of interest may arise and what steps the ECM representative shall take to address it. This includes the disclosure of the conflict of interest and withdrawal from any action relating to the conflict.

SUBCHAPTER E. ACTION AGAINST A LICENSE

TWC proposes new Subchapter E, Action Against a License, as follows:

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance

New §854.80 replaces repealed §854.213 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

§854.81. Administrative Action Based on Unsatisfactory Performance

New §854.81 replaces repealed §854.214 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual." Section 854.81 adds "advances" in subsection (a)(2), as this is another financial obligation that requires repayment and failure to fulfill this obligation is a cause for administrative action. Under subsection (a)(5), failure to comply with state and federal tax laws relating to the operation of the facility was added as a reason for administrative action. The manager's compliance with state and federal tax laws in operating a facility is imperative and a requirement for continued licensure. In subsection (a)(10), additional clarification was made of the substances that would interfere with the operation of the facility. Subsections (d)(2)(A) and (d)(2)(H) were modernized by adding an e-mail address as a way of notifying licensees of the allegations and reasons that administrative action is being considered.

§854.82. Procedures for Resolution of Manager's Dissatisfaction

New §854.82 replaces repealed §854.215 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

§854.83. Establishing and Closing Facilities

New §854.83 replaces repealed §854.216 and updates its provisions to revise many references to DARS and its organizational structure, and to replace "person" with "individual."

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas Legislature, Regular Session (2017), (to be codified at Texas

Government Code §2001.0045), does not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-member Commission to adopt rules necessary to integrate the vocational rehabilitation programs, including recommending adopting rules to implement the integration. Therefore, the exception identified in §2001.0045(c)(9) also applies.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align TWC Ch. 854 BET rules with TWC's operation of the program.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed new section and repeal will be in effect:

--the proposed new sections and repeal will not create or eliminate a government program;

--implementation of the proposed new sections and repeal will not require the creation or elimination of employee positions;

--implementation of the proposed new sections and repeal will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed new sections and repeal will not require an increase or decrease in fees paid to TWC;

--the proposed new sections and repeal will not create a new regulation;

--the proposed new sections and repeal will not expand, limit, or eliminate an existing regulation;

--the proposed new sections and repeal will not change the number of individuals subject to the rules; and

--the proposed new sections and repeal will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as these rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to comply with statutory requirements, unify and clarify rule language, update terminology, and improve consistency within the BET program.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 8, 2018. TWC also conducted a conference call with Board executive directors and Board staff on May 11, 2018, to discuss the concept paper. The ECM was consulted with during the development of the proposed rules. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS AND PROGRAM OPERATIONS

40 TAC §§854.10 - 854.12

The new rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt rules as necessary to administer the commission's policies.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.10. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless expressly provided otherwise, words in the present or past tense include the future tense, and the singular includes the plural and the plural includes the singular.

(1) Act--Randolph-Sheppard Act (20 USC, Chapter 6A, §107 et seq.).

(2) Application for Training--The "BET Application for Training" form used by VR customers to apply for prerequisite trainings that is a required prerequisite to be considered for a license.

(3) Assignment Application--The "BET Facility Assignment Application" form used by licensees to apply for a facility.

(4) BET--Business Enterprises of Texas.

(5) BET assignment--The document that sets forth the terms and conditions for management of a BET facility by the individual named as manager.

(6) BET director--The administrator of Business Enterprises of Texas; or, if there is no individual in that capacity, the individual designated by the VRD director to perform that function; or if there is none, the VRD director.

(7) BET facility--Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and other equipment that may be operated by BET managers and that are necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of tickets for any lottery authorized by state law.

(8) BET manual--"Business Enterprises of Texas Manual of Operations," which contains this subchapter adopted by the Agency and related instructions and procedures by which BET facilities are to be managed.

(9) Blind (individual who is)--An individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

(10) Business day--A day on which state agencies are officially required to be open during their normal business hours.

(11) ECM--Elected Committee of Managers--A committee representative of BET licensees pursuant to 20 USC §107b-1(3) of the Randolph-Sheppard Act.

(12) Expendables--Items that require a low capital outlay and have a short life expectancy, including, but not limited to, small wares, thermometers, dishes, glassware, flatware, sugar and napkin dispensers, salt and pepper shakers, serving trays, kitchen knives, spreaders, serving spoons, and ladles.

(13) Immediate family--Any individual related within the first degree of affinity (marriage) or consanguinity (blood) to the individual involved.

(14) Individual with a significant disability--An individual who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility or communication).

(15) Initial assignment--The first BET facility to which a manager is assigned after being licensed.

(16) Instruction by Agency staff members--Instructions that are proper and authorized and in accordance with applicable statutes and program rules, regulations, and procedures.

(17) Level 1 facility--A BET facility that in the previous year generated a net income after set-aside fees equal to or less than 170 percent of the median net income after set-aside fees of all BET managers for the previous year or, in the case of a new BET facility, is reasonably expected to generate that income.

(18) Level 2 facility--A BET facility that in the previous year generated a net income after set-aside fees greater than 170 percent of the median net income after set-aside fees of all BET managers for the previous year or, in the case of a new BET facility, is reasonably expected to generate that income.

(19) Licensee--A blind individual who has been licensed by the Agency as qualified to apply for and operate a BET facility, and which shall have the same meaning assigned to "blind licensee" in 34 CFR §395.1.

(20) Manager--A licensee who is operating a BET facility, and which shall have the same meaning assigned to "vendor" in 34 CFR §395.1.

(21) Net sales--All sales, excluding sales tax.

(22) Other income--Money received by a manager from sources other than direct sales, such as vending commissions or subsidies.

(23) Sanitation and cleaning supplies--Items that require a low capital outlay and have a short life expectancy, such as, by way of illustration and not limitation, mops, brooms, detergents, bleach, gloves, oven mitts, trash bags, food wrapping supplies, foil, and cleaning supplies for food equipment.

(24) State property--Lands and buildings owned, leased, or otherwise controlled by the State of Texas; and equipment and facilities purchased and/or owned by the State of Texas.

(25) Substantial interest--An individual has a substantial interest if:

(A) in an assignment decision:

(i) the individual will benefit financially from the assignment decision; and

(ii) funds received by the individual from the business exceed 10 percent of the individual's gross income for the previous year; or

(B) if he or she is related to an individual in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) of this paragraph.

(26) Vending machine--For the purpose of assigning vending machine income, a coin- or currency-operated machine that dispenses articles or services, except those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

§854.11. General Policies.

(a) Objectives. BET objectives shall be:

(1) to provide employment opportunities for qualified individuals; and

(2) to provide an ongoing training program for managers that encourages them to advance their upward mobility career opportunities within the program.

(b) Relationship of BET to VRD Services. The intent of BET, as authorized by the Act and the Texas Labor Code, is to stimulate and enlarge the economic opportunities for the citizens of Texas who are legally blind by establishing a vending facility program in which individuals who need employment are given priority in the operation of vending facilities selected and installed by the Agency. The Agency is required to administer BET in accordance with the Agency's vocational rehabilitation objectives. Therefore, a customer receiving services from VRD whose employment goal is to be a licensed manager shall have reached an employment outcome, as that term is used in the Rehabilitation Act of 1973, as amended, when the customer is licensed by the Agency and is managing a BET facility. The licensed manager

shall not be considered an employee of the Agency or of state or federal government.

(c) Full-time employment. Managing a BET facility shall constitute full-time employment. "Full-time" shall mean "being actively engaged in the management of a BET facility for the number of hours necessary to achieve satisfactory operation of the facility." The manager shall be available for necessary visits by Agency staff to allow inspection, advice, and consultation as may be required to ensure satisfactory operation. "Management" means "the personal supervision of the day-to-day operation of the assigned BET facility by the assigned manager."

(d) Subcontracting. The management of a BET facility shall not be subcontracted by a licensed manager except for temporary periods of time approved by the Agency and in those circumstances in which the Agency considers that subcontracting the operation of some parts of the facility is in the best interest of BET. Potential justifications for subcontracting include the following: business strategies in which a portion of the facility operation may be subcontracted so that the assigned manager may focus on another aspect of the facility; temporary events not to exceed six months in which the assigned manager is not capable of management duties due to illness, injury, or other events, as approved by the Agency; and the need for business expertise and resources beyond that available from BET. Any subcontracting shall require the prior written approval of the Agency. The approval of any subcontract is at the discretion of the Agency. This subsection does not apply to equipment or machines allowed to be placed within the facility and not owned by or arranged for by the Agency.

(e) Availability of funds. The administration of BET and the implementation of these policies are contingent upon the availability of funds for the purposes stated in this subchapter.

(f) BET manual. All BET policies adopted by the Agency shall be included in the BET manual. The BET director shall ensure that the manual and any revisions to it are provided to each licensee electronically or in the format requested by the licensee. The licensee shall be responsible for reading the manual and acknowledging in writing that he or she has read and understands its contents. The BET director shall ensure that the BET manual contains procedures from which licensees may obtain assistance in understanding BET policies and procedures.

(g) Accessibility of BET materials. All information produced by and provided to licensees by the Agency shall be in an accessible format. When possible, these materials are sent in the format requested by the licensee.

(h) Nondiscrimination.

(1) VR and BET participants. the Agency shall not discriminate against any blind individual who is participating in or who may wish to participate in BET on the basis of sex, age, religion, color, creed, national origin, political affiliation, or physical or mental impairment, if the impairment does not preclude satisfactory performance.

(2) BET facilities. Managers shall operate BET facilities without discriminating against any present or prospective supplier, customer, employee, or other individual who might come into contact with the facility on the basis of sex, age, religion, color, creed, national origin, political affiliation, or physical or mental impairment.

(i) Emergencies. The BET director is authorized to expend funds on an emergency basis to protect the state's investment in a BET facility not to exceed $50,000 in a fiscal year or $5,500 per facility incident due to riot, war, fire, earthquake, hurricane, tornado, flood, or other disasters, governmental restrictions, labor disturbances, or strikes.

(j) Temporary management. From time to time it becomes necessary to designate a temporary manager to an unassigned facility to ensure uninterrupted service to the host and customers. Temporary assignments shall be for the period stated in the assignment document. After the time frame stated in the assignment expires, the BET director shall review the temporary assignment and shall review the assignment every 90 days to determine the need for continuation of the temporary assignment. The temporary assignment shall terminate when a new manager is assigned to the facility. The Agency shall choose temporary managers from licensees; if a licensee is not available, the Agency may contract with a private entity. Before the Agency offers a licensee or a private entity a temporary opportunity, the regional BET staff, at a minimum, shall evaluate the following: the individual's willingness to serve for the stated temporary term; the qualifications and experience relevant to the current opportunity; and the documented management compliance history, along with other factors set out in Agency rules. The geographic BET staff shall provide its findings to the local ECM and seek a joint recommendation to BET management. BET management shall make the final determination. When more than one individual is recommended at the local level, BET management shall first give preference to managers available within the local ECM region and thereafter to the individual manager with a lower average historical income, to improve his or her income temporarily.

(k) Compliance with tax laws. Licensees and managers shall comply with state and federal tax laws and shall not have a tax lien against them.

§854.12. Consultants.

(a) If the Agency determines that a consultant is necessary to assist a manager or protect the interests of the Agency, the Agency shall contract with a consultant and may pay for the consultant out of the facility proceeds. The Agency shall not contract with a consultant when it possesses the expertise and staffing level to provide the consulting services.

(b) If the Agency determines that a consultant is needed to assist a manager, the BET director shall consult with the manager before contracting with a consultant. The final authority, however, for contracting with a consultant shall rest with the Agency.

(c) All consultant contracts entered into by the Agency for the provision of business support and mentoring services to the manager shall not exceed three years in duration, provided, however, that the contract may be extended for additional periods not to exceed one year each. No contract shall be extended until the manager has been consulted. The final discretion to extend the contract shall rest with the Agency.

(d) If the Agency determines it necessary to contract with a consultant to protect the interests of the Agency, the Agency shall enter into a separate agreement for that purpose with terms and conditions that the Agency may consider appropriate. The consultant will be procured in accordance with state contracting requirements with consideration of factors including business expertise, operational capability, experience, financial resources, and price in relation to the needs of the Agency.

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

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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SUBCHAPTER B. LICENSE AND ASSIGNMENTS

40 TAC §§854.20 - 854.24

The new rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary to administer the Commission's policies.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.20. Eligibility and Application Process.

(a) Prerequisites for training. To be eligible for BET training, a customer desiring a career with BET as an employment outcome in the vocational rehabilitation program shall:

(1) be at least 18 years of age;

(2) be a United States citizen residing in Texas (a birth certificate or other appropriate documentation must be submitted with the application);

(3) be legally blind as defined by these rules;

(4) be proficient in math, reading, and writing, as demonstrated through CCRC testing, as well as in adaptive technology, including word processing spreadsheet use and e-mail communication, as demonstrated through a CCRC final assessment;

(5) have the health and stamina required to perform safely the basic functions of a manager;

(6) have mobility skills to operate a BET facility safely, as documented by a VR counselor or assessment verified by an orientation and mobility instructor;

(7) satisfactorily perform a Work Evaluation Training conducted with a current BET operator;

(8) not have engaged in substance abuse for the previous 12 months; and

(9) be in compliance with state and federal tax laws and not be subject to any tax liens.

(b) Application process. Each eligible customer interested in applying for BET training must obtain approval and an application from the regional VR manager. The application must be submitted to the BET director. An eligible customer has successfully participated in the CCRC program. Interviews will be conducted by the BET director and an appointed panel. An e-mail notification of the results will be sent to the applicant.

§854.21. BET Licenses and Continuing Education Requirement.

(a) Natural individuals. Licenses to manage a BET facility shall be issued only to natural individuals.

(1) Prerequisites. No individual may be licensed until the individual has satisfactorily completed all required BET training and otherwise continues to satisfy the criteria for entry into BET.

(2) Issuance. A license issued by the Agency shall contain the name of the licensee and the date of issue. The license shall be signed by the VRD director and the BET director on behalf of the Agency and the State of Texas.

(3) Display. The license or a copy of the license shall be displayed prominently in each BET facility to which the manager is assigned.

(4) Property right. A license shall not create any property right in the licensee and shall be considered only as a means of informing the public and other interested parties that the licensee has successfully completed BET training and is qualified and authorized to operate a BET facility.

(5) Transferability. A license is not transferable.

(6) Term. A license issued by the Agency shall be valid for an indefinite period, subject, however, to termination or revocation under conditions specified in these rules that pertain to termination of a license for reasons other than unsatisfactory performance or administrative action.

(b) Annual continuing education requirements for licensees:

(1) The Agency and ECM conduct an annual training conference for all licensees to inform them of new BET developments and to provide instruction on relevant topics to enhance licensees' business competence and upward mobility in the program. Licensees must attend the Agency's training conference or an Agency-approved alternative training event every year to maintain their licenses and eligibility to bid on available facilities. They must document their attendance at the Agency training conference by signing attendance records provided at the conference. A licensee who is unable to attend the Agency training conference may satisfy the continuing education requirement by attending a BET-approved course or training conference. Such training includes, but is not limited to, attending the national training conferences for blind vendors conducted by the Randolph-Sheppard Vendors of America or by the National Association of Blind Merchants, or by completing a business-related course from the Hadley School for the Blind or a business-related course offered by an accredited community college.

(2) Licensees wishing to attend an alternative training course or conference must request approval through their local Agency staff. The local Agency staff forwards the request to the BET director for approval. The licensee must also provide proof of successful completion of any business-related course or attendance at a training conference through the local Agency staff to the BET director to receive credit for attendance. All costs associated with travel, lodging, meals, and registration when attending any training other than the Agency training conference will be the responsibility of the licensee.

(3) Licensees may use an alternative approved training course or training conference to satisfy the continuing education requirement only if they are unable to attend the Agency training conference because of personal medical reasons, the death of a family member, a medical emergency or serious medical condition of an immediate family member, or if there is not an Agency training conference offered during the licensee's 12-month evaluation period. Licensees must provide written documentation of the medical issues or death of a family member to their local Agency staff.

(4) Licensees who fail to complete continuing education requirements may be subject to administrative action up to and including termination of their licenses.

§854.22. Initial Assignment Procedures.

(a) This section defines the process for the initial assignments of managers. It is the goal of the process to provide a fair, unbiased, and impartial process for selection, transfer, and promotion.

(b) Initial assignment. When an individual completes BET training, the BET director shall make the initial assignment for the newly licensed individual. The initial assignment shall be for a minimum of 12 months. The BET director shall make the assignment based on the following factors, including but not limited to:

(1) availability of a Level 1 facility;

(2) recommendations from the BET training specialist and the ECM chair;

(3) licensee's training records;

(4) licensee's geographical concerns;

(5) licensee's compliance with state and federal tax laws and not be subject to any tax liens; and

(6) any other circumstances on a case-by-case basis.

§854.23. Career Advancement Assignment Procedures.

(a) Career advancement assignments. This section defines the process for the career advancement assignments of managers. It is the goal of the process to provide a fair, unbiased, and impartial process for selection, transfer, and promotion.

(1) Availability. All career advancement opportunities depend on the availability of BET facilities. No facility with a projected annual income equal to the annual median income level of all managers after set-aside fees shall be used for an initial assignment unless it has been advertised and made available to all licensees in the BET program and no one has been assigned to the facility as a result of the advertising process.

(2) Notice. As BET facilities become available and ready for permanent assignment, written notice of the availability shall be given to all licensees within 30 business days.

(3) On-site visits. An advertised facility shall be available for on-site visits upon reasonable notice by licensees interested in that facility assignment.

(b) Eligibility. To apply for an available facility, a licensee must meet the following requirements:

(1) The licensee shall have successfully managed a BET facility for a minimum of one year.

(2) The licensee shall be current on all accounts payable for the 12 months before the date of the facility announcement. Accounts payable include known debts to state and federal entities as well as any BET business-related debt. "Current" means "performing in accordance with written established or alternate payment plans associated with the accounts payable debts."

(3) The licensee shall be in compliance with state and federal tax laws and not be subject to any tax liens.

(4) The licensee shall not be on probation under §854.81 of this title (relating to Administrative Action Based on Unsatisfactory Performance).

(5) The licensee shall meet eligibility requirements of the facility's host organization, including, but not limited to:

(A) criminal background checks; and

(B) drug tests.

(6) The licensee shall not have submitted more than one insufficient funds check to the Agency within the 12 months before the date of the facility announcement.

(7) The licensee shall not have submitted more than one late report within the 12 months before the date of the facility announcement.

(8) If unassigned, the licensee shall have fulfilled all resignation requirements in the licensee's most recent facility assignment or be displaced and eligible to apply for a facility.

(9) The manager shall have an inventory of merchandise and expendables in the manager's current facility that the Agency has determined sufficient for its satisfactory operation.

(10) The licensee shall satisfy the Agency that he or she can maintain the merchandise and expendables required for the available facility.

(11) A licensee who has been placed on probation is not eligible for promotion and transfer for 30 days from the effective date of the most recent release from probation.

(12) A licensee who has been placed on probation twice within a 12-month period is not eligible for promotion or transfer for six months from the effective date of the most recent release from probation.

(13) A licensee who has been placed on probation three times within a two-year period is not eligible for promotion or transfer for one year from the effective date of the most recent release from probation.

§854.24. Career Advancement Assignment Application.

(a) BET application deadline. A licensee may apply for an available facility by applying electronically, by hand, or by mail not later than the 12th business day (exclusive of date of mailing) after the date the facility notice was published. The submission date shall be:

(1) the date the application is delivered electronically or by hand to the Agency; or

(2) three days after postmark of the application in the US postal service, whichever is earlier; or

(3) the date the application is delivered to an overnight courier.

(b) BET application contents. A copy of the current form of the application shall be included in the BET manual. The substance of the application form shall not be modified except by action of the Agency. Modifications shall be provided to all licensees before their effective date. Upon request by the manager and before the submission deadline, assistance is available from the local BET staff and ECM representative in completing the BET application form.

(c) Preliminary review of applications. The Agency staff and the ECM representative in each geographic area in which the applying licensees are located shall review all applications from their areas and shall verify the applicants' eligibility. If an ECM representative is an applicant for an available BET facility, the ECM chair shall appoint another ECM member for the review. Completed applications shall then be forwarded to the BET director, who shall provide copies to the ECM and Agency staff in the area in which the available facility is located.

(d) Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET director after reviewing the assessments of all applicants conducted by the ECM representative and Agency staff, and the subsequent recommendations, for the regions in which the avail-

able facilities are located. Panel members shall rank all eligible applicants using a worksheet that weights the applicant's performance by 50 percent for the applicant's most recent annual performance evaluation completed before the date of the facility advertisement, 25 percent for interview performance, and 25 percent for the submitted BET application form. Any other materials submitted by the applicants shall be provided by the same deadline as the BET application form and will be included in the 25 percent interview performance weighting component.

(e) Level 2 assignments. For Level 2 assignments, the following procedures, in addition to Level 1 procedures, shall apply:

(1) Business plan. An applicant shall submit a business plan to the BET director no later than the 20th business day after the postmark date on the notice of facility availability. Upon request by an applicant, Agency staff in the area in which the available facility is located shall provide the applicant with a standard packet of information that is necessary to prepare the business plan. Agency staff shall deliver the packet to the applicant no later than the third business day after receiving a request.

(2) Establishment of a pool of impartial and qualified individuals. The Agency shall establish and maintain a pool of qualified individuals who:

(A) have no personal, professional, or financial interest that would conflict with the objectivity of the individual;

(B) neither have nor have had any association with the Agency or BET before being considered as a pool member; and

(C) have at least five years' experience in business at a managerial or executive level, including experience in budget preparation and administration, personnel supervision or management, and administration of business plans or equivalents to business plans in the sector of business in which the individual has experience.

(3) Evaluation of business plans. All business plans shall be reviewed and evaluated by an individual chosen at random from the pool of impartial and qualified individuals. Business plans shall be evaluated and scored based on a scoring system of 100 points. The evaluations and scores shall then be forwarded to the BET director for consideration by the selection panel in the selection process.

(4) Selection panel. A selection panel consisting of one representative from the ECM, one Agency staff member, and one individual from the pool of impartial and qualified individuals shall be chosen by means of a computer program that selects randomly from a database. The selection of each panel member shall be from among all individuals within their respective categories, except that the impartial member may not be the individual who evaluated the business plans. If the member of a category of panel members who is selected is unable or refuses to serve, the BET director shall use the same method of random selection until three members are chosen.

(5) Presiding officer. The impartial panel member shall serve as the presiding officer of the selection panel.

(6) Interview notices. At least 10 business days before the convening of the selection panel, applicants shall be notified electronically, or, upon request, by first-class mail, of the date, place, and time of the selection panel interview.

(7) Selection panel materials. Completed applications, business plans, and each applicant's most recent performance evaluation completed before the date of the facility advertisement shall be provided to the selection panel members at least five business days before the date that the selection panel is to convene.

(8) Duties of selection panel. The selection panel shall review the documents provided and interview the applicants. The panel shall prepare a tabulation sheet for each applicant on which the panel member shall enter the business plan score and performance evaluation score previously received by the applicant. A third score shall be awarded by each panel member for the interview performance of the applicant. Each interview shall be rated on a maximum score of 100, based on such areas as the quality of the applicant's presentation, knowledge of the submitted business plan, and preparation for the assignment. Each applicant shall be interviewed on the same areas and given a similar amount of time to present his or her case. While questions must be tailored to each applicant's business plan, presentation, and knowledge, the panel should strive to conduct the interviews as similarly as possible. The selection panel shall then rank the top three applicants. An applicant's ranking shall be determined after weighting each applicant's business plan score by 25 percent, weighting each applicant's most recent performance evaluation completed before the date of the facility advertisement by 50 percent, and weighting the average interview score awarded by panel members by 25 percent. If there is a tie between applicants, the panel awards one point to the applicant who has the greater length of accumulated service as an assigned manager in a BET facility according to BET records. The selections shall be transmitted to the BET director, who shall in turn notify the highest ranked eligible applicant of the decision of the selection panel. The available facility shall be offered to the eligible applicants in order of ranking.

(9) Reports of improper contact. Members of the selection panel shall report alleged improper contacts to the BET director or VRD director. Improper contact is defined as communication with a member of the selection panel to influence or manipulate the selection of an applicant for the facility being considered for assignment by offering a thing or act of value, including promises of future benefit, or by threat. Nothing contained in this section, however, prohibits any licensee from endorsing or supporting any candidate for selection by furnishing a letter or other document to that effect to be included with the applying licensee's application. After the selection panel concludes its responsibilities, each panel member shall be required to sign a statement certifying whether the member had, or had knowledge of, improper contact during the selection proceedings.

(10) Process for investigating reports of improper contact. When alleged improper contact is reported, each applicant for the facility under consideration and the ECM chair shall be informed of the occurrence of an alleged improper contact. The information provided to the applicants shall describe the nature of the alleged improper contact but shall not divulge the identities of any individuals allegedly participating in such improper contact. Each applicant may object to continuation of the existing panel and request that a new panel be formed to select the manager for the available facility. The BET director, upon the request of any applicant for the facility, shall determine whether the improper contact requires that the panel be disbanded and a new panel formed. In making that decision, the BET director shall consider all relevant factors, including the objections, if any, of the applicants, to determine whether the improper contact is likely to influence the decision of the selection panel. If the BET director determines that the improper contact occurred and is likely to influence the selection process, the BET director shall direct the panel to disband and a new panel be formed to consider the selection for the available facility. The BET director shall inform all applicants of the decision to continue the selection process with the existing panel, or to form a new panel, and shall state the basis of the decision. The actions prescribed as a consequence of improper contact set forth in rules pertaining to administrative actions shall apply whether or not any improper contact results in the panel being disbanded.

(11) Exceptions to assignment and selection procedures. Unusual circumstances may require exceptions to assignment and selection procedures. Exceptions to these procedures shall be made only if the circumstance is not covered by assignment procedures and failure to react to the circumstance would be detrimental to BET or a licensee. Notwithstanding anything in this section, no exceptional procedure shall result in the removal of a manager from a facility except for reasons contained in rules pertaining to administrative actions. Assignment and selection decisions that are exceptions to these procedures shall be made by the BET director after discussing relevant information with the ECM chair and receiving the chair's recommendation. If a decision contrary to the ECM chair's recommendation is made, the BET director shall provide a written explanation of the decision to the ECM chair.

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

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SUBCHAPTER C. EXPECTATIONS OF TWC AND MANAGERS

40 TAC §§854.40 - 854.43

The new rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary to administer the Commission's policies.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.40. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.

(a) Survey. When a BET facility becomes available for assignment, Agency staff shall conduct a survey of the site to determine the fixtures, furnishings, and equipment required to allow the facility to operate in accordance with projections by Agency staff of the potential business model for the facility. When the facility is an existing one, the survey shall consider the need for replacement or repair of fixtures, furnishings, and equipment.

(b) Facility plan. Agency staff shall prepare a detailed listing of the requirements for fixtures, furnishings, and equipment for the facility, including specifications for each item required and a site plan of the facility depicting the placement of the fixtures, furnishings, and equipment within the facility. The facility shall be consistent with local ordinances as well as state and federal requirements.

(c) Acquisition, placement, and installation. When satisfied with the plan for the fixtures, furnishings, and equipment required for the facility, Agency staff shall procure the necessary fixtures, furnishings, and equipment to be placed or installed in the facility in accordance with the approved plans. With previous approval, the Agency may also purchase necessary fixtures, furnishings, and equipment for placement away from the facility for off-site storage or other approved reason. A manager's responsibilities as noted in rule apply to off-site equipment.

(d) Ownership.

(1) All state fixtures, furnishings, and equipment within the facility shall at all times remain the property of the State of Texas. The facility manager's use of all such fixtures, furnishings, and equipment shall be as a licensee only and in accordance with the BET Equipment Loan Agreement.

(2) The Agency shall have the sole authority to direct, control, transfer, and dispose of the fixtures, furnishings, and equipment.

(e) Modifications. No modifications or alterations shall be made to state-owned fixtures, furnishings, or equipment by any individual, firm, or entity without the express prior written approval of the Agency.

(f) Upkeep and maintenance.

(1) The manager assigned to a facility shall be provided with manuals, instructions, and guides electronically or in a format requested by the manager. These documents for state-owned fixtures, furnishings, and equipment within the facility should be in an accessible format.

(2) It shall be the responsibility of the manager to keep fixtures, furnishings, and equipment clean and sanitary and to perform maintenance required or recommended by the manufacturers or vendors of the fixtures, furnishings, and equipment. This must be in accordance with the BET instructions and equipment manuals.

(3) The manager shall keep and maintain accurate records of all maintenance performed on fixtures, furnishings, and equipment. Any failure or refusal of the manager to perform the maintenance referred to in this section shall result in the manager being required to reimburse the Agency for the cost or expense resulting from the failure or refusal and may result in further administrative action.

(g) Repairs and replacements.

(1) Upon notification, the Agency shall be responsible for all necessary repairs of any of the state-owned fixtures, furnishings, and equipment located within the facility except for repairs necessitated by the negligence, abuse, or misuse of the fixtures, furnishings, or equipment by the manager or the manager's employees. Failure to comply with manufacturer 's or BET's maintenance and preventive care requirements shall be considered negligence, abuse, or misuse. The cost of repairs necessitated by negligence, abuse, or misuse by the manager or the manager's employees shall be the sole responsibility of the manager. Failure to make such repairs may result in administrative action under §854.81 of this title (relating to Administrative Action Based on Unsatisfactory Performance).

(2) The manager shall follow the instructions as established by BET to facilitate the timely necessary repairs and for the payment for such services. The instructions provide specific procedures for initiating repairs by the manager and a list of approved vendors for repairs. The instructions provided to each manager are published revised from time to time.

(3) Under no circumstances is a manager authorized to have the cost of repairs charged to the Agency or to have repairs made by anyone other than approved vendors unless Agency staff has given the manager authority to do so in writing. Each vendor included in the approved list of vendors for repairs shall be informed by Agency staff

of this prohibition and of the procedures for authorized repairs and for payment for services.

(4) Agency staff members on their own initiative or upon request shall determine the need for replacement of any fixtures, furnishings, or equipment, and they shall report it to the BET director. If the BET director authorizes the expense, the replacement fixtures, furnishings, and/or equipment shall be purchased, contingent upon availability of BET funds.

(5) Fixtures, furnishings, and equipment shall not include sanitation and cleaning supplies. Each manager of a facility shall be responsible for replacing all such items with items of a quality comparable to those being replaced and originally furnished by the Agency.

(h) Initial inventory of merchandise and expendables for newly licensed managers. The Agency shall furnish without charge the initial inventory of merchandise and expendables for the initial assignment of a newly licensed licensee. The initial inventory of merchandise and expendables shall be sufficient to assist the manager with starting the business.

(i) Subsequent inventory of merchandise, sanitation and cleaning supplies, and expendables.

(1) The manager shall maintain an inventory of merchandise, sanitation and cleaning supplies, and expendables in the same quantities as were transferred to the manager upon assignment to the facility. If the Agency determines that changed circumstances require different quantities of merchandise, sanitation and cleaning supplies, and expendables, the Agency shall communicate in writing to the manager the new quantities required. If the new quantities of merchandise, sanitation and cleaning supplies, and expendables are necessary to provide for the satisfactory operation of the facility, those new quantities of inventory must be maintained by the manager.

(2) Managers assigned to any facility other than their initial assignment in Texas shall acquire the merchandise, sanitation and cleaning supplies, and expendables as determined by the Agency to be sufficient to satisfactorily operate the facility. To effectively expedite the changeover in facilities, when a facility is already stocked with merchandise, sanitation and cleaning supplies, and expendables, the existing stock shall become part of the required inventory stock level of the incoming manager. The amount owed by the incoming manager for the existing stock shall be the amount agreed to by the affected parties. If the existing inventory is the property of the state, the amount owed by the incoming manager shall be the amount paid with state funds.

(j) Purchases on credit. During the first three years of being in the program, managers must notify the Agency in advance of any purchase on credit of merchandise, sanitation and cleaning supplies, and expendables.

(k) Obtaining an advance from the Agency for initial inventory. A manager may apply to the Agency for an advance to purchase an initial inventory of merchandise, sanitation and cleaning supplies, and expendables. The manager must satisfy an advance received from the Agency to purchase merchandise on subsequent assignments within a 12-month period and must make monthly payments in the amount established by the Agency. The granting of an advance is discretionary and may be done only under the following conditions:

(1) The manager shall justify to the Agency, in writing, the need for the advance and why the funds are not available from other sources.

(2) The manager shall submit evidence satisfactory to the Agency that the financing has been sought from at least two commercial financial institutions.

(3) The manager shall demonstrate to the Agency his or her ability to repay the advance within 12 months.

(4) Managers with outstanding balances on advances are not eligible for transfer to another assignment.

(l) Transfer of fixtures, furnishings, equipment, and inventory of merchandise, sanitation and cleaning supplies, and expendable items. When a manager is assigned to an existing BET facility, the responsibility for the fixtures, furnishings, and equipment of that facility, as well as its inventory of merchandise, sanitation and cleaning supplies, and expendable items shall be transferred to the incoming manager. The BET director shall follow the procedures for transferring the equipment between the incoming and outgoing managers to ensure that the managers have full knowledge of the nature and condition of the items being transferred.

§854.41. Set-Aside Fees.

(a) The Agency requires managers to pay a set-aside fee based on the monthly net proceeds of their BET facilities. The purposes of requiring this payment are:

(1) to promote to the greatest possible extent the concept of a manager being an independent business individual;

(2) to cause BET to be to the greatest extent possible, self-supporting;

(3) to encourage and stimulate growth in BET; and

(4) to provide incentives for the increased employment opportunities for blind Texans.

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Agency for the following purposes:

(1) maintenance and replacement of equipment for use in BET;

(2) purchase of new equipment for use in BET;

(3) management services;

(4) ensuring a fair minimum return to managers; and

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if it is so determined by a majority vote of managers assigned to a facility, after the Agency provides to each such manager information on all matters relevant to these proposed purposes.

(c) Method of computing net proceeds.

(1) Net proceeds are the amount remaining from the sale of merchandise of a BET facility, all vending machine income, and other income accruing to the manager from the facility after deducting the reasonable and necessary cost of such sale, but excluding set-aside charges required to be paid by the manager. The manager shall not remove any items from the inventory or other stock items of the facility unless the manager pays for those items at the actual cost.

(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:

(A) cost of merchandise sold;

(B) wages paid to employees;

(C) payroll taxes; and

(D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility.

Discretionary expenses, not to exceed 1.5 percent of the monthly net sales, or $150, whichever is greater. Expenses must be verifiable, invoiced, and directly related to the operation of the facility. Acceptable expenses include:

(i) rent and utilities authorized in the permit or contract;

(ii) business taxes, licenses, and permits;

(iii) telecommunication services;

(iv) liability, property damage, and fire insurance;

(v) worker's compensation insurance;

(vi) employee group hospitalization or health insurance;

(vii) employee retirement contributions (the plans must be IRS-approved and not for the manager);

(viii) janitorial services, supplies, and equipment;

(ix) bookkeeping and accounting services;

(x) trash removal and disposal services;

(xi) service contracts on file with the Agency;

(xii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);

(xiii) medical expenses directly related to accidents that occur to employees at the facility, not to exceed $500;

(xiv) purchase of personally owned or leased equipment that has been approved by the Agency for placement in the facility;

(xv) repairs and maintenance to personally owned or leased equipment that has been approved by the Agency to be placed in the facility;

(xvi) consumable office supplies;

(xvii) exterminator or pest control services; and

(xviii) mileage expenses for vehicles required for the direct operation of vending facilities at the rate and method allowed by the Internal Revenue Service at the time the expenses are incurred.

(3) All reports by managers shall be accompanied by supporting documents required by the Agency.

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the net proceeds of the facility as determined in accordance with this section. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the BET director with the active participation of ECM at least annually each state fiscal year. The purpose of the review shall be to determine whether the percentage needs to be adjusted in order to meet the financial needs of the program. The percentage assessed against the net proceeds of facilities may be lowered or raised to meet the needs of the program. ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days before a review by the BET director in which the percentage is to be considered. For the period from the effective date of this amended rule until BET director undertakes his or her first annual review of the set-aside fee, the percentage shall be 5 percent.

(e) If ECM disagrees with the action taken to establish a new set-aside fee rate after the annual review, then ECM may choose to use the appeal process in §854.215.

(f) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use BET Monthly Facility Report, BE-117, to report monthly activities.

(g) Adjustments to monthly set-aside fee.

(1) To encourage managers to hire individuals with disabilities, managers shall deduct from their set-aside payment up to 50 percent of the wages or salary paid to an employee who is blind or who has another disability or disabilities (as defined by the Americans with Disabilities Act) during any month up to an amount not to exceed 5 percent of the set-aside payment amount for that month, or $250, whichever is less. A manager may make this deduction for any number of employees who are blind or have another disability as long as that deduction from the set-aside payment amount does not exceed 25 percent of the total set-aside payment that is due, or $1,250, whichever is less. The manager shall provide documentation to BET as required by the Agency to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, "who is blind or who has another disability" does not include:

(A) the manager;

(B) an individual who is blind or who has another disability at the first degree of consanguinity or affinity to the manager; or

(C) an individual who is blind or who has another disability claimed as a dependent, either in whole or in part, on the manager's federal income tax return.

(2) Adjustments provided for in paragraph (1) of this subsection shall not apply for any month in which the set-aside fee is not paid in a timely manner.

(3) To encourage managers to file their monthly statement of facility operations and pay their monthly set-aside fee promptly, managers shall have their monthly set-aside fee increased by 5 percent of the total amount due if either their monthly statement or the monthly set-aside fee is not received in a timely manner, pursuant to these rules. None of the terms of this rule shall be construed to create a contract to pay interest, as consideration for the use, forbearance, or detention of money, at a rate more than the maximum rate permitted by applicable laws and rules. This adjustment to the set-aside fee is not imposed as interest.

§854.42. Duties and Responsibilities of Managers.

(a) Managers shall comply with applicable law, the rules contained in this chapter, written agreements with hosts, the BET assignment, the requirements of the BET manual, and instruction by BET staff.

(b) Managers shall comply with procedures prescribed by the Comptroller of Public Accounts for the payment of sales taxes and provide evidence to the Agency of timely sales tax remittances.

(c) Managers shall not engage in conduct that demonstrably jeopardizes the Agency's right, title, and interest in the BET facility, its equipment, or the lease or agreement with the property managers.

(d) Managers shall maintain a professional appearance and act in a professional manner while managing a BET facility.

(e) Managers shall open a commercial business account in which they maintain sufficient funds to operate the BET facility.

(f) Managers shall hire sufficient employees to ensure the efficient operation of the BET facility and to provide satisfactory service to customers. If the facility is remodeled or if operational areas change, the manager must have sufficient employees on hand for the necessary shutdown and reopen cleanup.

(g) Managers shall be actively engaged in the management of a BET facility and be actively working the number of hours necessary to achieve satisfactory operation of the facility. With prior notice from the Agency, managers shall be available for all necessary visits to the facilities for advice, consultation, and inspections of the facility. If the business is closed for remodel or improvement, the manager shall be available for the opening, closing, and overall security of the business and assets.

(h) Managers shall take appropriate actions to correct deficiencies noted on BET facility audits or reviews within seven business days.

(i) Managers shall provide satisfactory service to the BET facility host and customers.

(j) Managers shall notify the Agency in advance if they intend to be absent from their assigned facility for more than two days.

(k) Managers shall provide BET staff with the following information and shall notify BET staff of changes to any item no more than 10 business days after a change occurs:

(1) the BET facility telephone number;

(2) a mailing address and an e-mail address to which BET correspondence is to be sent;

(3) a phone number for use in emergencies; and

(4) the manager's preferred accessibility format.

(l) Managers are accountable to the Agency for the proceeds of the business.

(m) Managers shall keep all records supporting the monthly facility report for three calendar years.

(n) Managers shall report the actual value of resale inventory by taking a physical count in the facility each month and submitting a written quarterly inventory (March, June, September, and December) with the monthly facility report.

(o) Managers, upon request by the Agency, shall make available all records pertinent to the facilities to which they have been assigned for audit or review. Any materials removed from the facility will be returned within 90 business days, unless evidence needs to be preserved.

(p) Managers shall maintain liability insurance coverage sufficient to indemnify the Agency if Agency funding is not available or insufficient for such purposes.

§854.43. Responsibilities of the Texas Workforce Commission.

(a) Management services. The Agency shall provide each manager with regular and systematic management services, which shall, at a minimum, include:

(1) explanations of Agency rules, procedures, policies, and standards;

(2) recommendations on how the facility can be made more profitable for the manager;

(3) techniques to develop positive relationships with customers, assistants, and management of the host organization;

(4) possible solutions to problems recognized by the manager or brought to the manager's attention by Agency staff or the facility host;

(5) continuing education and training courses and opportunities for managers designed to enhance skills, productivity, and profitability; and

(6) information about laws, rules, and regulations affecting the operation of a BET facility.

(b) Training. The Agency shall assist ECM in conducting a special training seminar for all licensees each year to inform them of new BET developments and to provide instruction on new, relevant topics to enhance upward mobility.

(c) Facility operating conditions. The Agency shall establish the conditions for operation of a BET facility in accordance with this subchapter and any requirements of the host. The operating conditions shall include, among other things, pricing-ranges requirements, hours of operation, and menu items or product lines. The Agency may revise the operating conditions from time to time as market conditions warrant. The final authority and ultimate responsibility for determining the price ranges to be charged for products sold through BET facilities shall rest with the Agency.

(d) BET financial data. Upon request, the Agency shall provide licensees with access to BET financial data. Also upon request, Agency staff shall assist the licensee in interpreting the data.

(e) Inventory payment. When a manager leaves the manager's initial assignment, the Agency shall pay the manager or the manager's heirs the value of the usable stock and supplies above the amount provided to the manager upon initial assignment.

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

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SUBCHAPTER D. BET ELECTED COMMITTEE OF MANAGERS

40 TAC §854.60, §854.61

The new rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary to administer the Commission's policies.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.60. BET Elected Committee of Managers' Duties and Responsibilities.

(a) Authority. The Elected Committee of Managers (ECM) is created and shall operate under 20 USC §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard Act.

(b) Relationship to the Agency. ECM shall be presumed as the sole representative of all licensees to the Agency in matters contained in the Randolph-Sheppard Act and implementing regulations requiring the active participation of the ECM. Active participation means an ongoing process of good-faith negotiations between ECM and the Agency in the development of BET policies and procedures before implementation. The Agency shall have the ultimate responsibility for the administration and operation of all aspects of BET and has final authority in decisions affecting BET.

(c) Relationship to licensees.

(1) It shall be the sole responsibility of the licensees who elect the members of ECM to ensure that the individuals elected represent all licensees.

(2) ECM shall, in addition to all other matters set forth in this subchapter or by law or regulation affecting the administration of BET, act as an advocate for licensees and shall strive to improve and expand BET and make it profitable and successful to the greatest extent possible for the mutual benefit of the Agency and of the legally blind Texans who participate in the program.

(d) BET policies, rules, and procedures. In all matters related to policies and rules, the Agency has the ultimate responsibility and the ultimate authority for their establishment and adoption. ECM shall actively participate in the consideration of significant BET decisions and in deliberations of rules and policies affecting BET. Whenever the Agency or ECM wishes to consider policies or rules related to BET, the Agency shall request that ECM participate in the Agency rule-drafting workshops to be conducted by the BET director. The BET director will work with ECM in a good-faith effort to agree in matters related to rule and policy changes.

(e) BET administrative decisions. In matters concerning the administration of BET, the Agency holds the ultimate responsibility and authority for making administrative decisions affecting BET. The BET director shall establish and maintain a continuing dialogue and exchange of information with ECM about decisions regarding the administration of BET and shall seek ECM input and advice on all significant decisions affecting the administration of the program. In cooperation with the ECM chair and other members of ECM that the ECM chair considers necessary and appropriate, the BET director shall develop and implement methods of establishing and maintaining the dialogue and exchange of information. The methods developed shall be set out in detail in a written format and shall be included in the BET manual.

(f) Exclusions from participation. ECM, its members, and BET managers are not employees, officers, or officials of the State of Texas. Therefore, ECM shall not participate in any decision-making process regarding Agency personnel, personnel policies, or personnel administration.

(g) Structure. ECM shall, to the extent possible, be composed of licensees who are representative of all licensees in BET based on such factors as geography and facility type and size. Two representatives shall be elected from each designated ECM region created by the Agency with the active participation of ECM and as regions may be revised or modified.

(h) Qualifications. ECM shall establish qualifications for candidates as well as the procedures for voting, tabulating, and announcing results. The Agency shall provide such advice and counsel as may be requested by ECM to accomplish all elections of representatives to ECM.

(i) Term of office. The term of office for ECM members shall be two years, beginning on January 1 following the election. Even- and odd-numbered districts shall alternate election years. Any ECM member elected to fill a vacancy shall serve the remainder of the unexpired term of the manager who vacated a position.

(j) Meetings. ECM shall meet once during each calendar year to elect officers and additionally as it may establish by bylaw. The ECM chair shall provide a written meeting agenda to the BET director 10 business days before each meeting.

(k) Internal procedures of ECM. ECM shall establish bylaws to govern its internal operation and order of business and shall provide the Agency with a copy.

(l) Travel expenses.

(1) Expenses for travel, meals, lodging, or other related expenses incurred by ECM representatives must be preapproved by the Agency.

(2) When representing a manager at a full evidentiary hearing, the ECM representative shall be reimbursed for travel, meals, and lodging at the rate allowed for travel by Agency staff members.

§854.61. BET Elected Committee of Managers' Conflict of Interest.

(a) The ECM representative shall immediately disclose any conflict of interest to all parties and shall withdraw from all matters related to the conflict. Final determination of a conflict of interest shall be made by the Agency.

(b) The ECM representative shall not use the position for private gain or act in a manner that creates the appearance of impropriety.

(c) The ECM representative may not vote or make recommendation on any BET promotion or transfer matter that would provide direct financial benefit to the ECM representative individually or the ECM representative's immediate family or on matters of the provision of services by the member or the entity the member represents.

(d) Before a discussion, vote, recommendation, or decision on any promotion or transfer matter before ECM, if a representative or an individual in the immediate family of such representative has a substantial interest in the assignment being considered, that ECM representative shall disclose the nature and extent of the interest or relationship and shall abstain from voting or making a recommendation on or in any other way participating in the decision on the matter.

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

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SUBCHAPTER E. ACTION AGAINST A LICENSE

40 TAC §§854.80 - 854.83

The new rules are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary to administer the Commission's policies.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.80. Termination of License for Reasons Other Than Unsatisfactory Performance.

(a) Causes for termination. The license of a licensee shall be terminated upon the occurrence of any one of the following:

(1) The licensee's visual acuity is improved by any means to the point at which the licensee no longer satisfies the definition of legally blind.

(2) The licensee becomes otherwise permanently disabled and as a result of such permanent disability is unable to perform the essential functions of operating and maintaining a BET facility. Being permanently disabled is having a condition that is medically documented and has existed or is expected to exist for at least 12 months. The determination of permanently disabled shall be made by the VRD director or designee after review of medical documentation and other information relevant to the issue. Other information relevant to the issue shall include recommendations from Agency staff and ECM, pertinent information from the licensee's BET file or provided by the licensee, and reports of examinations or evaluations, if any, obtained by the Agency and the licensee.

(3) The licensee is unassigned and has not accepted assignment offers or applied for an assignment when facilities are available for a period of six consecutive months. The six-month deadline may be extended by periods of 30 days when facilities are not available for assignment. Any unassigned period of 12 months or more requires retraining for the licensee to become eligible to bid for, or be assigned to, available facilities.

(b) Examination and evaluation. In any situation in which the vision or other disability of a licensee is at issue with respect to termination of a license, the Agency or the licensee may require an examination or evaluation by professionals to determine whether the licensee is otherwise permanently disabled and because of the permanent disability is unable to perform the essential functions of operating and maintaining a BET facility. The reports of such professionals shall be furnished to the Agency and the licensee. Any failure of the licensee to participate in required examinations or evaluations shall be grounds for administrative action.

(c) Restoration of license. A license terminated under the provisions of this section may be restored at the discretion of the Agency if the condition or conditions causing the termination were resolved satisfactorily. In considering a decision with respect to whether to restore a license that was terminated according to this section, the VRD director shall consult with appropriate BET staff members, the ECM chair, and any advocate for the licensee and shall consider all pertinent information and documentation provided by any of the individuals described in this subsection.

(d) Conditional restoration. If the VRD director determines that a license that was terminated according to this section should be restored, the VRD director may authorize the restoration of the license on any reasonable basis, such as participation in continued medical treatment or therapy, or completion of refresher or other courses of training.

§854.81. Administrative Action Based on Unsatisfactory Performance.

(a) Causes for administrative action based on unsatisfactory performance. One or more of the following acts or omissions by a manager shall subject a manager to administrative action for unsatisfactory performance:

(1) Failing to operate the assigned facility as set forth in the permit or contract with the host and/or in the manager's record of assignment unless prior written approval to operate the facility in another manner has been obtained from the Agency.

(2) Failing to pay money that is due from the operation of the facility, including, but not limited to, taxes, fees, advances, or assessments to a governmental entity or supplier, or knowingly giving false or deceptive information to or failing to disclose required information to or misleading in any manner a governmental entity, including the Agency, or a supplier.

(3) Failing to file required financial and other records with the Agency or preserve them for the time required by this subchapter.

(4) Failing to cooperate in a timely manner with audits conducted by the Agency or other state or federal agencies.

(5) Failing to be in compliance with state and federal tax laws relating to the operation of the facility, as demonstrated by a tax lien.

(6) Failing to maintain insurance coverage required by these rules.

(7) Using BET equipment or facility premises to operate another business.

(8) Failing to properly maintain facility equipment in a clean and operable condition within the scope of the manager's level of maintenance authorization.

(9) Intentionally abusing, neglecting, using, or removing facility equipment without prior written Agency authorization.

(10) Operating a facility under the influence of substances that interfere with the operation of the facility, including alcohol and illegal or prescription drugs.

(11) Operating a BET facility in a manner that demonstrably jeopardizes the Agency's investment in the facility.

(12) Using privileged information about an existing facility to compete with the Agency for the facility.

(13) Failing to comply with any federal or state law prohibiting discrimination and failure to ensure that services are provided without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, or disability.

(14) Failing to maintain the necessary skills and abilities for effectively managing a facility.

(15) Using a facility to conduct unlawful activities.

(16) Failing to comply with the manager's responsibilities under applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency staff.

(17) Communicating or causing another individual to communicate with a member of a selection panel or an applicant for a facility then being considered for assignment for the purpose of influencing or manipulating the selection of an applicant by offering to give a thing or act of value, including promises of future benefit, or by threat.

(18) Failing to complete annual continuing education requirements.

(b) Administrative action pending an appeal. The Agency may at its discretion suspend administrative action pending the outcome of an appeal.

(c) Types of administrative actions. The five types of administrative actions that are based on unsatisfactory performance are as follows:

(1) Written reprimand. Written reprimand is a formal statement describing violations of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency staff.

(2) Probation. Probation is allowing a licensee to continue in BET to satisfactorily remedy a condition that is not acceptable under this subchapter. If the condition causing probation is satisfactorily remedied within the time periods specified in the written notice of probation, the probation will be lifted. If the unacceptable condition is not remedied within the time specified, additional and more serious administrative actions may ensue. When a licensee who has been on probation two times in a three-year period qualifies for probation for the third time within those three years, the licensee's license may be revoked according to Agency rules.

(3) Loss of facility. Loss of facility is the removal of a manager from the manager's current facility for administrative reasons when the manager's actions or inactions endanger the Agency's investment in the facility.

(4) Termination. Termination is the revocation of a license and the removal of the licensee from BET.

(5) Emergency removal of manager.

(A) A manager may be summarily removed from a facility in an emergency. An emergency shall be considered to exist when the Agency, in consultation with the ECM chair, determines that some act or acts or some failure to act of that manager or any individual who is an employee, server, or agent of such manager, will, if such removal does not occur:

(i) result in a clear danger to the health, safety, or welfare of any individual or to the property of any individual in or around the facility; or

(ii) result in a deterioration of the existing or future relationship with the host, thereby putting the continuation of the facility in jeopardy; or

(iii) present a clear potential of substantial loss or damage to the property of the State of Texas.

(B) In any case in which a manager has been summarily removed from a facility on an emergency basis for any of the reasons set forth in subparagraph (A) of this paragraph, the manager shall be entitled to have a hearing about the necessity of the removal within 10 days after the removal has occurred.

(C) The time period for the hearing may be extended only by mutual agreement of the manager and the Agency under the following circumstances: if an official holiday of the State of Texas falls within the period, then the period shall be extended by the time of the holiday; or, if the services of an arbitrator cannot be obtained in time to hold the hearing within the period, then the period shall be extended by the time necessary to obtain the services of an arbitrator and schedule the hearing.

(D) If the manager desires to have a hearing, the manager shall notify the Agency in writing within 48 hours following the removal. The written notification need state only the name of the manager, the location of the facility, and that the manager desires to have a hearing about the need for summary removal. The request may be delivered to the BET director, the VRD director, or any local BET staff member in the geographic region in which the facility is located.

(E) Upon receipt of any such request, the BET director shall obtain the services of an arbitrator from the American Arbitration Association (AAA) or other similar organization to conduct the hearing.

(F) The manager shall be notified of the date, time, and place of the hearing. To the extent possible, the hearing shall be conducted in an area near the location of the facility.

(G) The hearing shall be conducted in accordance with the rules of AAA, except that the arbitrator shall be requested to announce orally a decision at the conclusion of the hearing.

(H) If the arbitrator determines that no emergency necessitating the removal of the manager exists, then the manager shall be immediately restored to the operation of the facility.

(I) No determination made as a result of the hearing shall operate to prejudice the rights of the manager to proceed with a grievance in accordance with the terms of this subchapter and the Act.

(d) Administrative procedures.

(1) The Agency shall decide what administrative action to take based on the seriousness of the violation, the damage to BET facilities and/or equipment, and the licensee's record.

(2) Upon receipt of information that indicates that administrative action may be appropriate, the Agency shall take the following actions before deciding whether to take administrative action:

(A) The Agency shall notify the licensee in writing of the allegations and reasons that administrative action is being considered. The notice shall either be hand-delivered and read to the licensee, or be delivered to the licensee's work, e-mail address, or home address.

(B) The licensee shall have five business days to respond to the notice, either in person or in writing. The response shall be made to the individual designated in the notice. After receiving the licensee's response, the Agency shall decide what administrative action, if any, is appropriate. If no response is received from the licensee in a timely manner, the Agency shall decide without the licensee's response what administrative action, if any, will be taken.

(C) If a decision is made to issue a written reprimand, the written reprimand will be accompanied by a summary of the evidence justifying the reprimand, suggested steps for correcting the violation, and the consequences of not correcting the violation. All reprimands shall contain notice of the licensee's right to appeal the reprimand and a statement that failure to correct the violation may result in further administrative action.

(D) If a decision is made to place a licensee on probation, the Agency shall deliver to the licensee a letter of probation containing the following:

(i) the specific reasons for probation;

(ii) the remedial action required to remove the licensee from probation;

(iii) the time within which the remedial action must take place;

(iv) the consequences of failure to take remedial action within the prescribed time frame; and

(v) notice of the licensee's right to appeal.

(E) Upon satisfactory completion of the remedial action outlined in the letter of probation, a licensee shall be removed from probation.

(F) Failure of the licensee to complete remedial requirements within the prescribed time frame shall result in one or more of the following actions:

(i) required training;

(ii) extension of probation;

(iii) restrictions on applying for another facility;

(iv) removal from the facility; or

(v) termination of license.

(G) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist to remove the manager from a facility, the Agency shall notify the manager in writing by hand delivery or certified mail with a return receipt requested that the manager's assignment to the BET facility has been terminated and the manager must vacate the facility. The removal letter shall contain the following information:

(i) specific reasons for removal from the facility;

(ii) actions required by the manager, if any;

(iii) requirements for obtaining reassignment; and

(iv) notice of the manager's right to appeal under the Act.

(H) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist for termination, the Agency shall notify the manager in writing by hand delivery, e-mail, or certified mail with a return receipt requested that the Agency has decided that sufficient cause exists to terminate the manager's license and the manager must vacate the facility. The termination letter shall contain:

(i) specific reasons for termination;

(ii) actions required by the licensee, if any;

(iii) procedures for applying for any other Agency services for which the individual may be eligible; and

(iv) notice of the licensee's rights under the Randolph-Sheppard Act.

(3) The provisions of paragraph (2) of this subsection notwithstanding, pending a determination with respect to administrative action, a manager may be removed from a facility if the Agency considers such removal to be in the best interest of BET and if efforts to correct the deficiencies have been unsuccessful.

(4) During the license termination process, the manager shall not be eligible for assignment to any other BET facility.

(e) Before termination of a license, the Agency shall afford the licensee an opportunity for a full evidentiary hearing.

§854.82. Procedures for Resolution of Manager's Dissatisfaction.

(a) Appealable actions. This section provides the procedures for licensees who are dissatisfied with the Agency's action arising from the operation of BET.

(b) Actions not subject to appeal. The phrase "the Agency's action arising from the operation of BET" in subsection (a) of this section does not include the following actions of the Agency:

(1) the hiring, firing, or discipline of Agency employees;

(2) the challenge of federal or state law, or rules previously approved by the Secretary of Education under the Act; or

(3) an action by the Agency unless it is alleged that the action is in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, or is unreasonable. "Unreasonable" shall mean "without rational basis or arbitrary and capricious."

(c) Agency discretion and sovereign immunity. The Agency does not waive its right and duty to exercise its lawful and proper discretion. The Agency does not waive its sovereign immunity.

(d) Remedies. Remedies available to resolve dissatisfaction shall correct the action complained of from the earlier time of:

(1) agreement by the parties about an appropriate remedy, or

(2) a final resolution under the Randolph-Sheppard Act that the Agency acted in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, or acted unreasonably.

(e) Informal procedures to review dissatisfactions. At the request of a licensee, the Agency shall arrange for and participate in informal meetings to resolve quickly a matter of dissatisfaction arising from the operation or administration of BET. The informal process is for resolving an issue in controversy quickly and amicably. It is not for the purpose of denying or delaying the manager's right to pursue resolution of a matter through a full evidentiary hearing. At any point during the informal process, either party may elect to terminate the following informal process procedures:

(1) A licensee may initiate informal procedures by notifying the Agency in writing through the BET director that the licensee is dissatisfied with a matter arising from the operation or administration of BET. The written notice must describe with reasonable particularity the specific matter in controversy, the date the action occurred, or an approximate date if the exact date is not known, and the licensee's desired relief or remedy. If the licensee is dissatisfied with a series of the same or related actions over a period, the notice shall describe, to the best of the licensee's ability, the time frame of the events and include the date of the most recent event about which the licensee is dissatisfied.

(2) To ensure that informal resolution is possible in a timely manner, the licensee's request to initiate informal proceedings must be filed with the Agency no later than 20 business days after the most recent event specified in the request. the Agency shall within a reasonable time arrange a meeting at a location, date, and time satisfactory to all parties.

(3) The licensee must notify the Agency when filing a request for informal proceedings if the licensee will be represented by legal counsel during mediation. The Agency will be represented by legal counsel only when the licensee is represented by legal counsel.

(4) Meetings shall take place in an informal environment and shall be attended by the licensee, a BET staff member, and a neutral third party who shall serve as an informal mediator during the discussions.

(5) The neutral third party shall be an individual certified in conducting mediations.

(6) The neutral third party's responsibility is to report to the Agency only that the effort to resolve the matter to the licensee's satisfaction was or was not successful. If an agreement is reached,

then the actions agreed to with respect to the facility or licensee shall be immediately taken.

(7) The provisions concerning mediation under Chapter 850 of this title (relating to Vocational Rehabilitation Services Administrative Rules and Procedures) shall not apply to or control the informal resolution procedures in this subchapter.

(f) Full evidentiary hearing. A manager has the right to request a full evidentiary hearing to resolve dissatisfaction according to the following:

(1) A manager has the right to request a full evidentiary hearing without first going through mediated meetings described in subsection (e) of this section.

(2) A request for an evidentiary hearing must be made no later than the 20th business day after the occurrence of the Agency action about which the manager complains. The VRD director, upon request of the complaining party, may extend the period for filing a grievance upon the showing of good cause by the complaining party for such additional period if such request is made no later than the 20th business day after the occurrence of the Agency action about which the manager complains.

(3) A manager requesting a full evidentiary hearing after the conduct of mediated meetings described in subsection (e) of this section must request such hearing in writing no later than the 20th business day after receipt of the VRD director's decision.

(4) A request for a full evidentiary hearing must be in writing and transmitted to the VRD director. A request that is postmarked within the designated time frame shall be considered delivered in a timely manner if properly posted.

(5) The request for a full evidentiary hearing must describe the specific action with reasonable particularity sufficient to provide notice as to the action that is alleged to be unreasonable or in violation of applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel. The request must, to the best of the complainant's knowledge, contain the date the action occurred, and the law or regulation must be reasonably identified if an action is alleged to be in violation of law, this subchapter, the requirements of the BET manual, or regulation. The request must also identify the desired relief or remedy.

(6) The manager may be represented in the evidentiary hearing by legal counsel or other representative of the manager's choice, at the manager's expense.

(7) The Agency shall arrange reader or other communication services for the manager, if needed, upon request by the manager at least three business days prior to the hearing date.

(8) The manager shall be notified in writing of the time and place fixed for the hearing and of the manager's right to be represented by legal or other counsel.

(9) Selection of the hearing officer.

(A) The hearings coordinator, the Agency's Office of General Counsel, shall select, on a random basis, a hearing officer from a pool of individuals qualified according to this section.

(B) The hearing officer shall be an impartial and qualified individual who:

(i) is not involved either with the Agency's action that is at issue or with the administration or operation of BET;

(ii) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(iii) has knowledge of the Randolph-Sheppard Act and any applicable state and federal regulations governing the appeal;

(iv) has received training specified by the Agency with respect to the performance of official duties; and

(v) has no personal, professional, or financial interest that would compromise his or her impartiality.

(C) An individual is not considered to be an employee of a public agency for the purposes of subparagraph (B)(ii) of this paragraph if the only consideration is that the individual is paid by the agency to serve as a hearing officer.

(10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act, Texas Government Code §2001.051 et seq., and this subchapter to the extent that those procedures do not conflict with the Act and its implementing regulations or this subchapter.

(11) Licensees bringing complaints shall have the burden of proving their cases by means of a preponderance of the evidence. Licensees shall present their evidence first. When a hearing is requested because of administrative action by the Agency against a licensee, The Agency shall have the burden of proving its case by a preponderance of the evidence and shall present its evidence first.

(12) Transcription of Proceedings.

(A) Unless precluded by law, the hearing shall be recorded electronically either by the hearing officer or by someone designated by the hearing officer. Such recording shall be the official record of the testimony recorded during the hearing. Any party, however, may request, at the party's expense, that the hearing be recorded by a court reporter if the request is made within 10 days of the date for the hearing.

(B) In lieu either of a recording of the testimony electronically or of the reporting of testimony by a court reporter, the parties to a hearing may agree upon a statement of the evidence to use transcription as a statement of the testimonial evidence, or agree to the summarization of testimony before the hearing officer, provided, however, that proceedings or any part of them must be transcribed on written request of any party.

(C) Unless otherwise provided in this subchapter, the party requesting a transcription of any electronic recording of the proceedings shall bear the cost for transcribing the testimony. Nothing provided for in this section limits the Agency to an electronic record of the proceedings.

(D) The record of the proceedings, including exhibits and any transcription, shall be made available to the parties by the Agency no later than the 30th business day after the close of the hearing.

(13) The hearing officer shall issue a recommendation that shall set forth the principal issues and relevant facts that were stated at the hearing and the applicable provisions of law, rule, the requirements of the BET manual, or any instruction by Agency personnel. The recommendation shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and bases for the conclusions.

(14) In formulating a recommendation, the hearing officer shall not evaluate whether the Agency's actions were wise, efficient, or effective. Rather, the hearing officer is limited to determining whether the Agency's actions were unreasonable, or if they violated applicable

law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel.

(15) If the hearing officer finds that the actions taken by the Agency were unreasonable or violated applicable law, this subchapter, the requirements of the BET manual, or any instruction by Agency personnel, the hearing officer shall also recommend any prospective action necessary to correct the violations.

(16) The hearing officer's recommendation shall be made no later than the 30th business day after the receipt of the official transcript. The recommendation shall be delivered promptly to the VRD director.

(17) The VRD director shall review the recommendation of the hearing officer and forward a decision to the manager no later than the 20th business day after receipt of the hearing officer's recommendation. The VRD director's decision shall include findings of fact and conclusions of law based on the evidence in the record and separately stated.

(18) Subject to the provisions of Texas Government Code §2001.144 and §2001.146, the VRD director's decision shall be the final decision of the Agency. Any such decision becomes the final decision of the Agency if a timely motion for rehearing or reconsideration is not filed.

(g) Arbitration. A manager appealing the Agency's decision must file a complaint with the US Secretary of Education in conformity with the provisions of the implementing regulations at 34 CFR §395.13 of the Act, pertaining to arbitration of vendor complaints.

§854.83. Establishing and Closing Facilities.

(a) Establishing facilities. On its own initiative, at the request of an agency that controls federal or state property, of the ECM, or of a private organization, the Agency shall survey the property, blueprints, or other available information concerning the property to determine whether the installation of a BET facility is feasible and consonant with applicable laws and regulations and with VRD objectives.

(1) If the installation of a BET facility is determined to be feasible, the Agency shall proceed to develop plans for the establishment of a facility in accordance with procedures promulgated and implemented by Agency staff and, when the facility is developed, shall assign a manager to the facility.

(2) If it is determined that a blind individual could not properly operate a vending facility at a particular location, the pertinent facility data will be presented to the VRD director to determine whether an individual whose disability is not of a visual nature could operate the facility in a proper manner. The phrase "could not properly operate a vending facility" includes the existence, at the time of the establishment of the facility, of laws or regulations that restrict the blind from operating a particular vending facility as defined under state and federal laws.

(b) Closing facilities. Except for temporary closings by Agency staff, no BET facility shall be closed by the Agency until both of the following have occurred:

(1) The BET director has certified to the VRD director that the facility is no longer a feasible or viable BET facility and provides reasons for that opinion.

(2) The VRD director has approved the proposed closing of the facility.

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

Filed with the Office of the Secretary of State on November 29, 2018.

TRD-201805078
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 689-9855

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SUBCHAPTER N. BUSINESS ENTERPRISES OF TEXAS

40 TAC §§854.200 - 854.217

The repeals are proposed under Texas Labor Code §355.012(a), authorizing the commission to promulgate rules necessary to implement Chapter 355, and under Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt rules as necessary to administer the Commission's policies.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapter 355.

§854.200. Purpose.
§854.201. Legal Authority.
§854.202. Definitions.
§854.203. General Policies.
§854.204. BET Administration.
§854.205. Training of Potential Applicants and Licensees.
§854.206. BET Licenses.
§854.207. Initial and Career Advancement Assignment Procedures.
§854.208. Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables.
§854.209. Set-Aside Fees.
§854.210. Duties and Responsibilities of Managers.
§854.211. Responsibilities of the Department of Assistive and Rehabilitative Services, Division for Blind Services.
§854.212. BET Elected Committee of Managers.
§854.213. Termination of License for Reasons Other Than Unsatisfactory Performance.
§854.214. Administrative Action Based on Unsatisfactory Performance.
§854.215. Procedures for Resolution of Manager's Dissatisfaction.
§854.216. Establishing and Closing Facilities.
§854.217. Forms.

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

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TITLE 43. TRANSPORTATION

PART 14. TRAVIS COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 425. REGULATION OF MOTOR VEHICLE TITLE SERVICES

43 TAC §425.1

The Travis County Tax Assessor-Collector's Office proposes new §425.1, concerning Rules Governing Title Service Licenses. The Tax Assessor-Collector has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Bruce Elfant, Travis County Tax Assessor-Collector, has determined that for the first five-year period this section is in effect, there will be no fiscal impact for state or local government. The county will keep all revenues from licensing fees to offset spending.

Mr. Elfant has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcement of the rule will be to reduce vehicle theft and related document fraud.

Mr. Elfant has considered the impact of the proposed section on government growth during the first five years that the rule would be in effect, and has determined that: (1) it creates a government program; (2) implementation will not require the creation or elimination of employee positions; (3) implementation will not require an increase or decrease in any future appropriations from the Texas legislature; (4) it requires an increase in payment of fees to the Tax Assessor-Collector which will offset the costs of regulating motor vehicle title services to reduce vehicle theft and related document fraud; (5) the proposed section creates a new regulation in accordance with Chapter 520, Subchapter E of the Texas Transportation Code; (6) it does not expand, limit or repeal an existing regulation; (7) as a new regulation, it increases the number of individuals subject to its applicability; and (8) it does not affect this state's economy.

The Travis County Tax Assessor-Collector has received motor vehicle title services records from approximately 40 to 50 distinct entities per year since 2012. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with this section will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the section may experience increased business opportunities because non-compliant competitors will be sanctioned. Mr. Elfant does not believe that the proposed section will have an adverse economic effect on rural communities.

In preparing the proposed section, the Travis County Tax-Assessor Collector considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. The Travis County Tax Assessor-Collector also considered assessing lower and higher license fees but concluded that the needs of Travis County are different from the counties that set regulations under 43 TAC §95.1 (Harris County), 43 TAC §301.1 (Fort Bend County), 43 TAC §325.1 (El Paso County) and 43 TAC §401.1 (Hidalgo County).

Comments on the proposed new section may be submitted to Mr. Joe Marshall, Deputy Chief Tax Collector, Travis County Tax Assessor-Collector's Office, P.O. Box 1748, Austin, Texas 78767. The deadline for all comments is 30 days after publication in the *Texas Register.*

The Travis County Tax Assessor-Collector proposes the new section pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles, or codes.

§425.1. Rules Governing Title Service Licenses.

(a) All companies and individuals wishing to conduct title service business in Travis County as governed by Chapter 520 of the Transportation Code under Subchapter E (the "Act") must be licensed by the County Tax Assessor-Collector. Runners for a full service deputy that has been approved by the Tax Assessor Collector and the Commissioners Court pursuant to Chapter 217 of the Texas Administrative Code are subject to these rules.

(b) "Title service business" means processing motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of the Texas Transportation Code or Chapter 70 of the Texas Property Code.

(c) Individuals and companies wishing to complete an application to register as a motor vehicle title service company, or as a runner, must apply at the Travis County Tax Assessor-Collector's Administration location, currently located at 5425 Airport Blvd. Austin, Texas, using the forms provided by the County Tax Assessor-Collector. All applicants must present a valid government-issued photo identification card at the time they apply. Lack of such government-issued identification disqualifies an applicant from being licensed. The minimum age at which a person may apply for a license is 18.

(d) Who Must Apply for a License. There are two categories of licenses that are required to do title service business: the Motor Vehicle Title Service License and the Title Service Runner License.

(1) An organization that falls into the category of "motor vehicle title service" company must be licensed by the County Tax Assessor-Collector. "Motor vehicle title service" means any person who, for compensation, directly or indirectly assists other persons in obtaining title documents by submitting, transmitting or sending applications for title documents to the appropriate government agencies; and

(2) A "motor vehicle title service runner" is an employee or licensed agent of a licensed motor vehicle title service company or a runner for a full service deputy. The motor vehicle title service runner has the authority to present motor vehicle title documents to the County Tax Assessor-Collector's office for processing. Runners must be authorized by a motor vehicle title service company or full service deputy and licensed by the County Tax Assessor-Collector. Runners may represent more than one motor vehicle title service company.

(e) General Application Requirements. All individual applicants must provide a current finger-print based criminal history record check from the Texas Department of Public Safety. All applicants must meet the requirements set forth in the Act and any rules and regulations promulgated by the Texas Department of Motor Vehicles.

(1) Additional Requirements for Motor Vehicle Title Service License.

(A) Applicants shall also provide a "doing business as" (DBA) certificate, or articles of incorporation; and any additional information requested by the County Tax Assessor-Collector's Office to establish the business reputation and character of the applicant. Applicants must provide a physical address. No license will be issued to a company or individual whose address is a Post Office Box.

(B) The operator of a motor vehicle title service company will provide the company name, as well as the names of all officers, directors, partners, and individuals who have an ownership interest in that company. The motor vehicle title service company shall assume the responsibility for the accuracy and validity of all documents presented to the County Tax Assessor-Collector under its name.

(C) All persons with an ownership interest in a motor vehicle title service company are subject to the requirements of the Act and must be individually licensed under its terms and conditions.

(D) A licensed motor vehicle title service company or full service deputy must authorize all individuals who will submit paperwork on its behalf. Individuals whose names are not on file as agents of a title service company or full service deputy will not be allowed to conduct any title service business on behalf of that company or deputy.

(2) Additional Requirements for Title Service Runner License.

(A) Runners must be identified and sponsored by a motor vehicle title service company, or a full service deputy, in order to conduct business on its behalf. Only full service deputies or persons that have been granted a motor vehicle title service license can authorize a runner. The required documents for any runner who is authorized as an agent of a title company must be on file with each service company for which the runner is an authorized agent.

(B) Runners must fulfill all requirements set forth in the Act and any rules and regulation promulgated by the Texas Department of Motor Vehicles, as well as any additional requirements of the County Tax Assessor-Collector's Office to establish the business reputation and character of the applicant.

(C) Any unlicensed individual observed conducting frequent motor vehicle title transactions on behalf of others, and who claims not to be receiving any compensation for such activities, shall be required to complete an affidavit stating that he or she is not receiving compensation for conducting motor vehicle title transactions. The affidavit shall be notarized and forwarded to the appropriate enforcement agencies by a deputy of the County Tax Assessor-Collector.

(D) Licenses for runners of a full service deputy are only valid so long as the full service deputy is authorized to operate as a deputy in Travis County.

(3) Process for License Approval, Renewal and Reinstatement.

(A) Applicants for a license shall complete and submit the form(s) approved by the Tax Assessor Collector for the particular license and shall submit the necessary form(s), including all required documentation, to the designated person or location. All information shall be complete and accurate. Knowingly submitting false information in connection with an application may subject the applicant to criminal liability, in addition to suspension or revocation of the applicant's license.

(B) Applications will be reviewed for compliance and appropriateness for a license by the Tax Assessor Collector's designee ("Designee").

(C) After submission of a fully completed application, applicants will be contacted by mail, email or phone, typically within ten (10) working days of the recommendation of the Designee regarding the approval, renewal or reinstatement of a license. If all of the required information was not included or if the information was otherwise insufficient to make a determination, the Designee may recommend denial of the license or request additional information at his/her discretion.

(D) Once an application has been recommended for approval by the Designee, it still must receive final approval by the Tax Assessor Collector to be valid. If approved, the applicant will receive notice and will be instructed to report to the office of the County Tax Assessor-Collector to pick up a Letter of Authorization ("License"). If the application is not approved, the applicant will receive a Notice of Intent to deny the application and may begin the Appeal Process. See Subsection (g) of this section below.

(f) The Review Board.

(1) The County Tax-Assessor-Collector shall appoint a three-member Review Board to review any appeal of a Notice of Intent to deny, suspend, revoke or reinstate a license. The Review Board shall consist of a deputy or employee from the County Tax Assessor-Collector's office who deals with motor vehicle registration; a member selected from law enforcement, and a community representative who may, but is not required to be active in the motor title service industry. Appointments will last two years and replacements will be selected on a staggered basis.

(2) The Review Board shall meet as needed at a time and place determined by the County Tax Assessor-Collector.

(3) A quorum of two members of the Review Board must be present to render a decision. No proxy votes will be allowed.

(4) The County Tax Assessor-Collector shall appoint a member of the Review Board to chair meetings of the Review Board.

(5) A majority vote of members present at a meeting of the Review Board shall determine the outcome of matters under consideration.

(6) All decisions of the Review Board shall be subject to final review by the County Tax Assessor-Collector.

(7) If a member is absent for three consecutive meetings, the County Tax Assessor-Collector may, in his or her discretion, remove the member and appoint a new member to serve the remainder of the term.

(8) If a member resigns, the County Tax Assessor-Collector shall appoint a new member to serve the remainder of the term.

(g) The Appeal Process.

(1) The County Tax Assessor-Collector's Designee will send a letter by registered or certified mail at the address in the holder's application of any intended action to deny an application or to revoke or suspend a holder's License ("Notice of Intent"), stating the facts or conduct alleged to warrant the action.

(2) A person who receives a Notice of Intent may submit a written request for appeal to the County Tax Assessor-Collector within

20 calendar days from the date of such notice, and must include a written response to the Notice of Intent, including any evidence, in the form of documents or sworn affidavit testimony, that would demonstrate that person's compliance with all applicable Texas statutes, agency regulations, and these Rules. If a request for appeal is not made in a timely manner, the holder's License shall be automatically denied, revoked, or suspended without further notice.

(3) Upon receipt of a timely request for an appeal, the County Tax Assessor-Collector will request review by the Review Board. All evidence shall be submitted in writing in order to expedite the Appeal Process. The Designee will forward a copy of the application (if applicable), all information received from the applicant or license holder, any other information considered by the Designee and the Tax Assessor-Collector, and a copy of the Notice of Intent to the Review Board as the "Record" to be reviewed.

(4) The Review Board will review the Record and make a recommendation to the County Tax Assessor-Collector stating whether the Review Board agrees or disagrees with the action taken.

(5) The Chair of the Review Board may limit or discard evidence that he or she finds is not material or relevant or is unduly repetitious. The Review Board shall review the Record in making any factual decisions that support its recommendation and shall not conduct an independent investigation into the underlying facts. However, the Review Board may request additional information from the applicant or the Designee.

(6) The Review Board may recommend other disciplinary action than the proposed adverse action.

(7) The recommendation of the Review Board will be forwarded to the Tax Assessor- Collector for his/her final review and determination. The proposed adverse action will be stayed until such final determination is made.

(8) Notice of the Tax Assessor-Collector's decision and the disposition of the appeal shall be sent to the license holder by certified or registered mail at the address contained in the holder's application or in the holder's request for an appeal.

(h) License Reinstatement.

(1) The Review Board will, to the extent possible, examine all license suspensions before the end of the suspension period. The Review Board will make a recommendation to the County Tax Assessor-Collector as to whether the individual or company should have the license reinstated.

(2) The County Tax Assessor-Collector shall review the Board's recommendation and render a final decision.

(3) A person whose license has been revoked may not apply for reinstatement or a new license before the first anniversary of the date of revocation.

(i) Factors Considered for Denial, Suspension, or Revocation of Application for License, and for Renewal or Reinstatement of a License.

(1) The County Tax Assessor-Collector or his/her Designee has the authority to review any complaints regarding a Motor Vehicle Title Service Company or Motor Vehicle Title Runner licensed by the Tax Assessor-Collector. Complaints should be submitted in writing to the County Tax Assessor-Collector's Office and include supporting factual information and/or documentation.

(2) A license is not valid until an application receives final approval by the Tax Assessor-Collector. Under Section 520.059 of the Act, the County Tax Assessor-Collector may deny, suspend, revoke or reinstate a license at his or her discretion. Grounds to disqualify an individual from being licensed under these Rules may include, but are not limited to, the following:

(A) Failure to meet all of the license requirements set forth in the Act and any rules and regulations promulgated by the Texas Department of Motor Vehicles and/or Texas Department of Transportation, or failure to provide information requested by the County Tax Assessor-Collector.

(B) Submitting incomplete, false or misleading information on the application form or any supporting documents.

(C) Conviction or deferred adjudication of a felony;

(D) Conviction or deferred adjudication of a crime of moral turpitude for which the completion date of the applicant's sentence is less than five years from the date of the application.

(E) Any criminal history or other information that would call into question the business reputation or character of the applicant in the Tax Assessor-Collector's discretion.

(F) Any violation of the Act, these Rules, or the administrative procedures promulgated by the County Tax Assessor-Collector, the Texas Department of Motor Vehicles or the Texas Department of Transportation, including, but not limited to:

(i) Failure to maintain records under Section 520.057 of the Transportation Code; or

(ii) Failure to permit inspection of records as required by Section 520.028 of the Transportation Code.

(G) Previous suspensions or revocations of the applicant's Motor Vehicle Title Service License or Title Service Runner License by any County Tax Assessor-Collector's office.

(H) Previous offenses under Section 520.061 of the Act, failure to timely pay any fines or penalties for such offenses, or previous injunctions under Section 520.062 of the Act.

(I) Submitting vehicle document packets that are found to contain false information and the false information is determined to have been knowingly or intentionally submitted by the license holder.

(J) A Title Service Runner is subject to License suspension or revocation if the Runner presented a title packet to the County Tax Assessor-Collector that was not authorized by a full service deputy or licensed Motor Vehicle Title Service company; altered or forged the original paperwork prepared for and signed by the full service deputy or Motor Vehicle Title Service company; or presented documents bearing an unauthorized signature.

(K) The County Tax Assessor-Collector has the right to summarily revoke any license upon notification of the license holder's conviction or deferred adjudication of a felony, a crime of moral turpitude, or an offense under Section 520.061 of the Act.

(L) The County Tax Assessor-Collector may suspend or revoke a Motor Vehicle Title Service Company's License for acts in violation of these rules or other law committed by a Title Service Runner employed or contracted by such company, if the County Tax Assessor-Collector also suspends or revokes the license of the at-fault Title Service Runner.

(M) The County Tax Assessor-Collector may take disciplinary action appropriate to the circumstances. For example and without limitation, a 90-day suspension, a 180-day suspension, or revocation.

(j) Annual Renewal; Fees. Licenses must be renewed annually and will automatically expire on the anniversary of the date of issuance. Applicants for renewal or reinstatement must meet all original requirements. Non-refundable annual fees for licenses shall be as follows:

(1) The fee for a Motor Vehicle Title Service Company License shall be $350.00 for the first year and $300.00 per year each year thereafter.

(2) The annual fee for a Title Service Runner License shall be $170.00 for the first year and $150.00 per year each year thereafter.

(3) The fee for replacing a lost license shall be $10.00.

(4) If a previously licensed applicant's license has been expired for 90 days or less, the applicant must pay 1.5 times the renewal fee set forth above. If a license has been expired for more than 90 days but less than one year, the applicant must pay 2 times the renewal fee set forth above. If any license has been expired for more than a year, it may not be renewed; the applicant must obtain a new license.

(5) If a person was licensed, but moved to another state, and has been doing business in the other state for the two years preceding the application, that person may renew an expired license and must pay 2 times the renewal fee set forth above.

(k) Policies for Conducting Transactions.

(1) A valid copy of the current License issued by the Tax Assessor-Collector must be presented to the County Tax Assessor-Collector at the time of each transaction. A Tax Assessor-Collector vehicle transaction form must accompany all motor vehicle title service transactions. The motor vehicle title service company officer or operator shall print and sign his or her name in the space provided, and fill in his or her company authorization number in the space provided.

(2) The individual preparing the document will print and sign his or her name in the space provided. That person will also fill in the identifier from his or her Texas driver's license number or valid government-issued photo identification. Photo identification must be available for each transaction.

(3) All runners processing documents at the office of the County Tax Assessor- Collector shall print and sign their names in the spaces provided. Runners shall also fill in their County Tax Assessor-Collector authorization number in the appropriate block.

(4) In the space labeled Description of Vehicles, the title service company must list and identify all transactions as transfer of ownership, renewal or replacement of license plates or registration sticker. Each vehicle make, model, year and vehicle identification number must be printed legibly. Only the vehicles authorized by a licensed motor vehicle title service company can be included on the form. The motor vehicle title service company is responsible for the accuracy and validity of the information for each vehicle listed. Only vehicles authorized and listed by the licensed motor vehicle title service company will be processed.

(5) After the final vehicle transaction on each transaction form is completed, a copy of the transaction form will be made and given to the runner.

(l) Record Keeping. Under Sections 520.057 and 520.058 of the Act, all Title Companies must adhere to record keeping and record availability standards.

(m) Amendment Process. The County Tax Assessor-Collector reserves the right to amend these rules as deemed necessary.

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

Filed with the Office of the Secretary of State on November 30, 2018.

TRD-201805109
Bruce Elfant
Tax Assessor-Collector
Travis County Tax Assessor-Collector
Earliest possible date of adoption: January 13, 2019
For further information, please call: (512) 854-9268

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §§353.1302 - 353.1304

The Texas Health and Human Services Commission (HHSC) adopts new §353.1302, concerning Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019, without changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6715). HHSC also adopts the amendments to §353.1303 concerning Quality Incentive Payment Program for Nursing Facilities before September 1, 2019 and new §353.1304, concerning Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019, with changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6715).

BACKGROUND AND JUSTIFICATION

In order to continue incentivizing nursing facilities to improve quality and innovation in the provision of nursing facility services, HHSC is adopting new quality metrics, eligibility requirements, and financing components for the Quality Incentive Payment Program for Nursing Facilities (QIPP) to begin in program year 3 (i.e., September 1, 2019, through August 31, 2020).

The QIPP is a type of Medicaid managed care delivery system and provider payment initiative, or directed payment program. Such programs require annual approval from the Centers for Medicare & Medicaid Services (CMS). In April of 2017, CMS approved the QIPP for implementation on September 1, 2017, and HHSC adopted Texas Administrative Code §353.1301 and §353.1303 to govern the program. The QIPP is now in its second year, which began on September 1, 2018.

While still a very young program, HHSC heard stakeholder calls to expand the QIPP to allow more Medicaid nursing facility clients to benefit. HHSC also received feedback from CMS when it approved year 2 of the program that the QIPP quality measures should be modified and enhanced in future program years.

With these goals in mind, HHSC convened a series of workgroup meetings during June, July, and August 2018. The workgroup included private and public nursing facility owners and operators, managed care organizations, and advocacy groups representing nursing facility providers and clients. This rule adoption emerged from these workgroup meetings.

Existing §353.1301 is not being amended at this time. Existing §353.1303 has been modified to make it applicable to the program's operation before September 1, 2019, and new §353.1302 and §353.1304 will apply to the program's operation beginning September 1, 2019. In §353.1304, the text of subsections (c) and (g) has been changed from what was proposed to clarify that the Registered Nurse (RN) staffing metrics can be met by an RN, Advanced Practice Registered Nurse, Nurse Practitioner, Physician Assistant, or physician (Medical Doctor or Doctor of Osteopathic Medicine).

COMMENTS

The 30-day comment period ended November 12, 2018.

During this period, HHSC received comments regarding the proposed amendment and new rules from three entities, including:

Daybreak Ventures;

Ensign Services; and

Healthcare Support Management.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter appreciated that new §353.1302 sets the Medicaid utilization percentage that determines private nursing facility eligibility in QIPP at 65 percent.

Response: HHSC agrees that setting the Medicaid utilization percentage at 65 percent for private nursing facility eligibility will increase participation of private nursing facilities in the program, thereby incentivizing more facilities to improve quality of care for Medicaid clients.

Comment: One commenter expressed concerns that the recruitment and retention metric in new §353.1304(c) would be difficult to achieve due to high staff turnover caused by nursing facility rates that have been static since 2014.

Response: HHSC understands the challenge in recruiting additional long term care staff to fulfill the Registered Nurse (RN) staffing metric in Component Two. HHSC declines to make any changes to these quality metrics at this time. The quality metrics will ultimately be determined in a public hearing per §353.1304(e). The additional RN staffing hours portion of the Component can be fulfilled by using Telehealth services, which would allow providers to reach the staffing requirements while potentially mitigating the need to hire additional staff. The recruitment and retention program in proposed Component Two includes the creation of a recruitment and retention plan. The purpose of the metric is to provide additional financial resources for staff recruitment.

Comment: One commenter expressed concern that private nursing facilities are not eligible to participate in Component Four per §353.1302(g)(4)(D) as infection control is equally important in private nursing facilities.

Response: HHSC acknowledges the importance of infection control in all nursing facilities. However, Non-State Government Owned Nursing Facilities (NSGOs) have an intrinsic responsibility in the area of public health. HHSC declines to make the suggested change at this time.

Comment: One commenter asked whether the additional RN hours in the staffing metric in Component Two are in addition to Director of Nursing Hours, if there are any specific hours specified, and whether the hours can be fulfilled by a/an RN, Advanced Practice Registered Nurse (APRN), Physician Assistant (PA), or physician.

Response: HHSC intends that these hours are in addition to any current staffing at the facility and cannot be duplicative of or concurrent with other staffing duties. Likewise, the additional Component Two staffing hours must be "beyond and non-concurrent with" the CMS-mandated eight hours of on-site RN coverage per day per §353.1304(c)(4). The facility may provide the additional eight hours (in full or in part) by telehealth coverage as described in §353.1304(g). HHSC currently does not require specific hours of the day for additional coverage, and does not intend to specify any further conditions on when the hours occur. HHSC is amending subsections (c) and (g) of §353.1304 to clarify that the additional staffing hours, whether provided on-site or by telehealth, can be provided by RNs, nurse practitioners, APRNs, PAs, and physicians (Medical Doctors or Doctors of Osteopathic Medicine).

Comment: One commenter suggested a different process for the reconciliation described in §353.1301(g). The commenter suggested revising §353.1303(f)(3) so that HHSC reconciles the amount of the non-federal funds actually expended under this section during each eligibility period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter, except when the Per Member Per Month (PMPM) utilization within the various SDAs is not proportionately distributed to the rate setting PMPM calculated.

Response: Intergovernmental transfer (IGT) suggestions made by HHSC are based upon the NSGO facilities' historical Medicaid days compared to the total NSGO days in the program. As such, IGT suggestions are calculated using a statewide distribution and should be refunded on the same basis that they are collected. HHSC declines to make the suggested change at this time.

STATUTORY AUTHORITY

The amendment and new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

§353.1303. Quality Incentive Payment Program for Nursing Facilities before September 1, 2019.

(a) Introduction. This section establishes the Quality Incentive Payment Program (QIPP) for nursing facilities (NFs) providing services under Medicaid managed care (MC) before September 1, 2019. QIPP is designed to incentivize NFs to improve quality and innovation in the provision of NF services to Medicaid recipients, using the Centers for Medicare & Medicaid Services (CMS) Five-Star Quality Rating System as its measure of success.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 of this subchapter (related to General Provisions).

(1) Baseline--A NF-specific starting measure used as a comparison against NF performance throughout the eligibility period to determine progress in the QIPP Quality Measures.

(2) Benchmark--The CMS National Average prior to the start of the eligibility period by which a NF's progress with the Quality Measures is determined.

(3) CHOW application--An application filed with the Department of Aging and Disability Services (DADS) for a NF change of ownership (CHOW).

(4) DADS--The Texas Department of Aging and Disability Services or its successor agency.

(5) Eligibility period--A period of time for which an eligible and enrolled NF may receive the QIPP amounts described in this section. Each QIPP eligibility period is equal to a state fiscal year (FY) beginning September 1 and ending August 31 of the following year. Eligibility Period One is equal to FY 2018, beginning September 1, 2017, and ending August 31, 2018.

(6) MCO--A Medicaid managed care organization contracted with HHSC to provide NF services to Medicaid recipients.

(7) Network nursing facility--A NF that has a contract with an MCO for the delivery of Medicaid covered benefits to the MCO's enrollees.

(8) Non-state government-owned NF--A network NF where a non-state governmental entity holds the license and is a party to the NF's Medicaid provider enrollment agreement with the state.

(9) Private NF--A NF that is not owned by a governmental entity.

(10) Quality Assurance Performance Improvement (QAPI) Validation Report--A monthly report submitted by a NF, that is eligible for and enrolled in QIPP, to an MCO that demonstrates that the NF has convened a meeting to review the NF's CMS-compliant plan for maintaining and improving safety and quality in the NF.

(11) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D, of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(c) Eligibility for participation in QIPP. A NF is eligible to participate in QIPP if it complies with the requirements described in this subsection for each eligibility period.

(1) Eligibility Period One. A NF is eligible to participate in QIPP for Eligibility Period One if it meets the following requirements:

(A) The NF is a non-state government-owned NF.

(i) The NF must be a non-state government-owned NF with a Medicaid contract effective date of April 1, 2017, or earlier. A NF undergoing a CHOW from privately owned to non-state government owned will only be eligible under this subparagraph if DADS received a completed CHOW application by March 2, 2017, and all required documents pertaining to the CHOW (i.e., DADS must have a complete application for a change of ownership license as described under 40 TAC §19.201 (relating to Criteria for Licensing), §19.210 (relating to Change of Ownership License), and §19.2308 (relating to Change of Ownership)) by March 31, 2017.

(ii) The non-state governmental entity that owns the NF must certify the following facts on a form prescribed by HHSC.

(I) that it is a non-state government-owned NF where a non-state governmental entity holds the license and is party to the facility's Medicaid contract; and

(II) that all funds transferred to HHSC via an intergovernmental transfer (IGT) for use as the state share of payments are public funds.

(iii) The NF must have been a participant in the Minimum Payment Amounts Program (MPAP) or must be located in the same RHP as, or within 150 miles of, the non-state governmental entity taking ownership of the facility. This geographic proximity criterion does not apply to NFs that can establish good cause for an exception to this criterion.

(B) Private NFs. The NF must have a percentage of Medicaid NF days of service that is greater than or equal to the private NF QIPP eligibility cut-off point. The private NF QIPP eligibility cut-off point will be equal to the mean percentage of historical Medicaid NF days of service provided under fee-for-service (FFS) and MC by all private NFs plus one standard deviation, as determined by HHSC. For each private NF, the percentage of Medicaid NF days is calculated by summing the NF's Medicaid NF FFS and MC days of service and dividing that sum by the facility's total days of service in all licensed beds. Medicaid hospice days of service are included in the denominator but excluded from the numerator.

(2) Future eligibility periods. Eligibility requirements for eligibility periods after Eligibility Period One are the same as the requirements under paragraph (1) of this subsection except that the deadlines specified in paragraph (1)(A)(i) of this subsection will be updated by HHSC. Updated deadlines will be shared with all NFs by a date to be determined by HHSC.

(d) Data sources for historical units of service. Historical units of service are used to determine the private NF QIPP eligibility cut-off point, individual private NF QIPP eligibility status, and the distribution of QIPP funds across eligible and enrolled NFs.

(1) All data sources referred to in this subsection are subject to validation using HHSC auditing processes or procedures as described under §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(2) The data source for the determination of the private NF QIPP eligibility cut-off point is the most recently available, audited Texas Medicaid NF cost report database.

(3) Data sources for the determination of each private NF's QIPP eligibility status are listed in priority order below. For each eligibility period, the data source must align with the NF's fiscal year that ends no more recently than in the calendar year four years prior to the calendar year within which the eligibility period ends. For example, for the eligibility period ending on August 31, 2018, the data source must align with the NF's 2014 fiscal year or an earlier fiscal year and for the eligibility period ending on August 31, 2019, the data source must align with the NF's 2015 fiscal year or an earlier fiscal year.

(A) The most recently available Medicaid NF cost report for the private NF. If no Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the private NF. If no Medicaid NF cost report for a prior owner of the private NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF. If no Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the private NF is available, the private NF is not eligible for participation in QIPP.

(4) Data sources for determination of distribution of QIPP funds across eligible and enrolled NFs. For each eligibility period, the data source must align with the NF's fiscal year that ends no more recently than in the calendar year four years prior to the calendar year within which the eligibility period ends. For example, for the eligibility period ending on August 31, 2018, the data source must align with the NF's 2014 fiscal year or an earlier fiscal year and for the eligibility period ending on August 31, 2019, the data source must align with the NF's 2015 fiscal year or an earlier fiscal year.

(A) The most recently available Medicaid NF cost report for the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no audited Medicaid NF cost report is available, the data source in subparagraph (B) of this paragraph must be used.

(B) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year. If no Staffing and Compensation Report is available, the data source in subparagraph (C) of this paragraph is must be used.

(C) The most recently available Medicaid NF cost report for a prior owner of the NF. If the cost report covers less than a full year, reported values are annualized to represent a full year. If no Medicaid NF cost report for a prior owner of the NF is available, the data source in subparagraph (D) of this paragraph must be used.

(D) The most recently available Medicaid Direct Care Staff Rate Staffing and Compensation Report for a prior owner of the NF. If the Staffing and Compensation Report covers less than a full year, reported values are annualized to represent a full year.

(e) Participation requirements. As a condition of participation, all NFs participating in QIPP must allow for the following:

(1) HHSC must be able to access data for the NF from one of the data sources listed in subsection (d) of this section.

(2) The NF must submit a properly completed enrollment application by the due date determined by HHSC.

(3) The entity that owns the NF must certify, on a form prescribed by HHSC, that no part of any payment made under the QIPP will be used to pay a contingent fee, consulting fee, or legal fee associated with the NF's receipt of QIPP funds and the certification must be

received by HHSC with the enrollment application described in paragraph (2) of this subsection.

(4) The entity that owns the NF must submit to HHSC, upon demand, copies of contracts it has with third parties that reference the administration of, or payments from, QIPP.

(f) Non-federal share of QIPP payments. The non-federal share of all QIPP payments is funded through IGTs from sponsoring non-state governmental entities. No state general revenue is available to support QIPP.

(1) HHSC will share suggested IGT responsibilities for the eligibility period with all QIPP eligible and enrolled non-state government-owned NFs on or around May 15 of the calendar year that also contains the first month of the eligibility period. Suggested IGT responsibilities will be based on the maximum dollars to be available under the QIPP program for the eligibility period as determined by HHSC, plus ten percent; forecast STAR+PLUS NF member months for the eligibility period as determined by HHSC; and the distribution of historical Medicaid days of service across non-state government-owned NFs enrolled in QIPP for the eligibility period. HHSC will also share estimated maximum revenues each eligible and enrolled NF could earn under QIPP for the eligibility period with those estimates based on HHSC's suggested IGT responsibilities and an assumption that all enrolled NFs will meet 100 percent of their quality metrics. The purpose of sharing this information is to provide non-state government-owned NFs with information they can use to determine the amount of IGT they wish to transfer.

(2) Sponsoring governmental entities will determine the amount of IGT they wish to transfer to HHSC for the entire eligibility period and will transfer one-half of that amount by May 31 of the calendar year that also contains the first month of the eligibility period. The second half of the IGT amount will be transferred by November 30 of the calendar year that also contains the first month of the eligibility period.

(3) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each eligibility period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter.

(g) QIPP capitation rate components. QIPP funds will be paid to MCOs through three new components of the STAR+PLUS NF MC per member per month (PMPM) capitation rates. The MCOs' distribution of QIPP funds to the enrolled NFs will be based on each NF's performance on a set of defined quality metrics.

(1) Component One.

(A) The total value of Component One will be equal to 110 percent of the non-federal share of the QIPP program.

(B) Interim allocation of funds across qualifying non-state government-owned NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Monthly payments to non-state government-owned NFs will be triggered by the NF's submission to the MCOs of a monthly QAPI Validation Report.

(D) Private NFs are not eligible for payments from Component One.

(E) The interim allocation of funds across qualifying non-state government-owned NFs will be reconciled to the actual distribution of Medicaid NF days of service across these NFs during the eligibility period as captured by HHSC's Medicaid contractors for fee-for-service and managed care 180 days after the last day of the eligibility period. This reconciliation will only be performed if the weighted average (weighted by Medicaid NF days of service during the eligibility period) of the absolute values of percentage changes between each NFs proportion of historical Medicaid days of NF service and actual Medicaid days of NF service is greater than 20 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to 35 percent of remaining QIPP funds after accounting for the funding of Component One.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Quarterly payments to NFs will be triggered by achievement of performance requirements as described in subsection (h) of this section.

(3) Component Three.

(A) The total value of Component Three will be equal to 65 percent of remaining QIPP funds after accounting for the funding of Component One.

(B) Allocation of funds across qualifying non-state government-owned and private NFs will be proportional, based upon historical Medicaid days of NF service.

(C) Quarterly payments to NFs will be triggered by achievement of performance requirements as described in subsection (h) of this section. Payments made to NFs meeting the standards of Component Three will include both the 35 percent allocated for Component Two and the remaining 65 percent allocated for Component Three.

(4) Funds that would lapse due to failure of one or more NFs to meet QAPI reporting requirements or quality metrics will be distributed across all QIPP NFs based on each NF's proportion of total earned QIPP funds from Components One, Two, and Three combined.

(h) Distribution of QIPP payments.

(1) Prior to the beginning of the eligibility period, HHSC will calculate the portion of each PMPM associated with each QIPP-enrolled NF broken down by QIPP capitation rate component, quality metric, and payment period. For example, for NF A, HHSC will calculate the portion of each PMPM associated with that NF that would be paid from the MCO to the NF as follows:

(A) Monthly payments from Component One as QAPI reporting requirements are met will be equal to the total value of Component One for the NF divided by twelve.

(B) Quarterly payments from Component Two associated with each quality metric will be equal to the total value of Component Two associated with the quality metric divided by four.

(C) Quarterly payments from Component Three associated with each quality metric will be equal to the total value of Component Three associated with the quality metric divided by four.

(D) For purposes of the calculations described in subparagraphs (B) and (C) of this paragraph, each metric will be allocated an equal portion of the total dollars included in the component.

(E) In situations where a NF does not have enough data for a metric to be calculated, the funding associated with that metric will be evenly distributed across all remaining metrics.

(2) MCOs will distribute payments to enrolled NFs as they meet their reporting and quality metric requirements. Payments will be equal to the portion of the QIPP PMPM associated with the achievement for the time period in question multiplied by the number of member months for which the MCO received the QIPP PMPM.

(i) Performance requirements.

(1) Quality metrics.

(A) There will be a minimum of three quality metrics for an eligibility period. For eligibility period one, there are the following four quality metrics:

(i) high-risk long-stay residents with pressure ulcers;

(ii) percent of residents who received an antipsychotic medication (long-stay);

(iii) residents experiencing one or more falls with major injury; and

(iv) residents who were physically restrained.

(B) Quality metrics may change from eligibility period to eligibility period but will always be limited to those under the CMS Five-Star Quality Rating System. Information regarding specific quality metrics for an eligibility period will be provided annually through the QIPP webpage on the HHSC website on or before February 1 of the calendar year that also contains the first month of the eligibility period.

(C) Quality metric baselines will be based on each individual NF's average performance on the metric as reported by CMS for the federal quarter that ends prior to the first day of the eligibility period and the three prior federal quarters, or as determined by HHSC.

(D) Quality metric benchmarks will be based on the national average for the metric as reported by CMS for the federal quarter that ends prior to the first day of the eligibility period, or as determined by HHSC.

(2) Achievement requirements. In order to receive payments from Components Two and Three for a quality metric, a NF must show improvement over the baseline or exceed the benchmark for the metric.

(A) To qualify for a payment from Component Two, a NF must meet at least the initial quarterly goal of 1.7 percent improvement from the baseline, with subsequent quarterly goals increasing to a maximum of seven percent by the end of the eligibility period. For example, to qualify for a payment from Component Two for a quality metric for the second quarter of the eligibility period, the NF must meet at least the second quarter goal of 3.4 percent improvement from the baseline.

(B) To qualify for a payment from Component Three, a NF must meet at least the initial quarterly goal of 5.0 percent improvement from the baseline with subsequent quarterly goals increasing to a maximum of 20 percent by the end of the eligibility period. For example, to qualify for a payment from Component Three for a quality metric for the second quarter of the eligibility period, the NF must meet at least the second quarter goal of 10.0 percent improvement from the baseline. A NF that qualifies for a payment from Component Three for a metric automatically qualifies for a payment from Component Two for the same metric.

(C) A NF that exceeds the benchmark for a metric qualifies for a payment from both Component Two and Component Three for that metric. A NF that exceeds the benchmark may decline in performance and still qualify for a payment from both Component Two and Component Three as long as the NF continues to exceed the benchmark for the metric.

(j) Changes of ownership.

(1) If an enrolled NF changes ownership during the eligibility period to private ownership, the NF under the new ownership must meet the private NF eligibility requirements described in this section in order to continue QIPP participation during the eligibility period.

(2) If a non-state government-owned NF changes ownership during the eligibility period to another non-state governmental entity, the NF under the new ownership must meet the non-state government-owned eligibility requirements described in this section in order to continue QIPP participation during the eligibility period.

(k) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(k) of this subchapter.

§353.1304. Quality Metrics for the Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019.

(a) Introduction. This section establishes the quality metrics that may be used in the Quality Incentive Payment Program (QIPP) for nursing facilities (NFs) on or after September 1, 2019.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this and other sections of this subchapter may be defined in §353.1301 (relating to General Provisions) or §353.1302 (relating to Quality Incentive Payment Program for Nursing Facilities on or after September 1, 2019) of this subchapter.

(1) Baseline--A NF-specific initial standard used as a comparison against NF performance in each metric throughout the eligibility period to determine progress in the QIPP quality metrics. For example, for MDS-based measures, the facility's baselines will be set at the most recently available four-quarter average for each metric.

(2) Benchmark--A metric-specific initial standard set prior to the start of the eligibility period and used as a comparison against a NF's progress throughout the eligibility period. For example, for MDS-based measures, the benchmarks will be set at the most recently published CMS National Average for each metric.

(c) Quality metrics. For each eligibility period, HHSC will designate one or more of the following quality metrics for each QIPP capitation rate component.

(1) Quality assurance and performance improvement (QAPI) meetings. Monthly meetings in which the NF reviews its CMS-compliant plan for maintaining and improving safety and quality in the NF. QAPI meetings must contribute to a NF's ongoing development of improvement initiatives regarding clinical care, quality of life, and consumer choice. For the eligibility period beginning September 1, 2019, QAPI meetings have been designated as the quality metric for Component 1.

(2) MDS-based measures. Measures listed in CMS' Five-Star Quality Rating System and based on Minimum Data Set (MDS) assessment data. Within the Five-Star Quality Rating System, HHSC can select any MDS-based measure as long as there are viable data sources available for timely calculations related to the measure. For the eligibility period beginning September 1, 2019, the following five MDS-based measures may be used in Components Three and Four:

(A) high-risk long-stay residents with pressure ulcers;

(B) percent of residents who received an antipsychotic medication (long-stay);

(C) percent of residents with decreased independent mobility;

(D) percent of residents with urinary tract infections; and

(E) percent of residents appropriately given the pneumonia vaccine.

(3) Recruitment and retention program. A program that includes a plan developed by the NF to improve recruitment and retention of staff and monitor outcomes related thereto. For the eligibility period beginning September 1, 2019, the recruitment and retention plan will be used in Component Two.

(4) RN staffing metrics. Registered nurse (RN) hours beyond and non-concurrent with the CMS-mandated eight hours of RN on-site coverage each day. On-site hours must be met by an RN, Advanced Practice Registered Nurse (APRN), Nurse Practitioner (NP), Physician Assistant (PA), or physician (Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO)). Telehealth services can be used to meet some or all of the RN staffing metrics when a NF has telehealth policies and procedures developed in accordance with subsection (g) of this section. For the eligibility period beginning September 1, 2019, the following two RN staffing metrics will be used in Component Two:

(A) four hours of additional RN coverage per day; and

(B) eight hours of additional RN coverage per day. A NF that meets the eight hours of additional RN coverage per day will automatically qualify for the metric described in subparagraph (A) of this paragraph.

(5) Infection control program. A program that improves antibiotic stewardship and measures outcomes through the use of infection control and data elements. For the eligibility period beginning September 1, 2019, the infection control program will be used in Component Four, and the program will consist of the following infection control and data elements:

(A) whether a facility:

(i) has identified leadership individuals for antibiotic stewardship;

(ii) has created written policies on antibiotic prescribing;

(iii) has an antibiotic use report generated by a pharmacy within last 6 months;

(iv) audits (monitors and documents) adherence to hand hygiene (HH);

(v) audits (monitors and documents) adherence to personal protective equipment (PPE) use;

(vi) has an infection control coordinator who has received infection control training;

(vii) has infection prevention policies that are evidence-based and reviewed at least annually;

(viii) has a current list of reportable diseases;

(ix) knows points of contact at local or state health departments for assistance;

(B) the number of:

(i) vaccines administered to residents and employees;

(ii) residents with facility acquired Clostridium difficile diagnosis;

(iii) residents on antibiotic medications;

(iv) residents with multi-drug resistant organisms; and

(C) select infection rates.

(6) Other metrics related to improving the quality of care for Texas Medicaid NF residents. HHSC may develop additional metrics for inclusion in QIPP if there is a specific systemic data-supported quality concern impacting Texas Medicaid NF residents. Any metric developed for inclusion in QIPP will be evidence-based and will be presented to the public for comment in accordance with subsection (e) of this section.

(d) Performance requirements. For each eligibility period, HHSC will specify the performance requirement that will be associated with the designated quality metric. Achievement of performance requirements will trigger payments for the QIPP capitation rate components as described in §353.1302 of this subchapter. For some quality metrics, achievement is tested merely on a met versus unmet basis. Other metrics require a certain level of improvement, such as reaching a quarterly percentage goal. The following performance requirements are associated with the quality metrics described in subsection (c) of this section.

(1) QAPI meetings. Each month, a NF must attest on a form designated by HHSC that it convened a QAPI meeting. The NF must submit the form to HHSC by the first business day following the end of the month. Each quarter, HHSC will validate a random sample of the attestation forms. The NF that submitted the attestation form must provide the supporting documentation stated in the attestation form.

(2) MDS-based measures. A NF must show a five percent relative improvement on a quarterly basis over the baseline or exceed the benchmark for the selected measure.

(A) Baseline improvement is measured against quarterly targets determined by HHSC prior to the eligibility period.

(B) A NF that exceeds the benchmark for a measure qualifies for the payment from any related component. A NF that exceeds the benchmark may decline in performance and still qualify for a payment from the related component as long as the NF continues to exceed the benchmark for the measure.

(3) Recruitment and retention program. During the first month of the eligibility period, a NF must submit its recruitment and retention plan to HHSC. If substantive changes are made to the recruitment and retention plan, an update of the plan must be submitted to HHSC during the month in which the changes take effect.

(A) Failure to submit the recruitment and retention plan in the first month of the eligibility period will result in not meeting the metric for that month for the related component.

(B) Each subsequent month, a NF will submit to HHSC documentation produced during the development of self-direct staffing goals and in the monitoring of staffing outcomes, in accordance with the NF's recruitment and retention plan.

(C) Each quarter, HHSC will validate a random sample of recruitment and retention plans and outcome monitoring documentation. The NF that submitted the plan must provide supporting documentation, including policies and outcomes.

(4) RN staffing metrics. A NF meets the RN staffing metrics by showing that the facility was staffed at the required number of hours for at least 90 percent of the days in the reporting period.

(5) Infection control program. Each quarter, a NF must report:

(A) the presence of a number of infection control elements to exceed a quarterly benchmark. For the eligibility period beginning September 1, 2019, the NF must report the presence of seven of the nine elements in subsection (c)(5)(A) of this section to meet the metric; and

(B) all required data elements regarding infection control tracking in subsection (c)(5)(B) and (C) of this section.

(6) Other metrics related to improving the quality of care for Texas Medicaid NF residents. If HHSC develops additional metrics for inclusion in QIPP, the associated performance requirements will be presented to the public for comment in accordance with subsection (e) of this section.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated performance requirements no later than December 31 of the calendar year that precedes the first month of the eligibility period. The notice must be published either by publication on HHSC's Internet web site or in the *Texas Register.* The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to the HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted within 15 business days of publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(f) Final quality metrics and performance requirements will be provided through the QIPP webpage on HHSC's website on or before February 1 of the calendar year that also contains the first month of the eligibility period.

(g) Telehealth. In order for a NF to use telehealth services to meet some or all of the RN staffing metric, the following requirements must be met:

(1) the telehealth services must be both audio and visual in nature;

(2) the telehealth services must be provided by an RN, APRN, NP, PA, or physician (MD or DO); and

(3) The NF must have policies and procedures for such services. The NF's policy must include the following:

(A) how the NF arranges telehealth services;

(B) how the NF trains staff regarding the availability of services, implementation of services, and expectations for the use of these services; and

(C) how the NF documents telehealth services including initiation of services, the services provided, and the outcome of services.

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 November 30, 2018.

TRD-201805110
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 30, 2018
Proposal publication date: October 12, 2018
For further information, please call: (512) 424-6637

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 5. FUEL QUALITY

4 TAC §5.5

The Texas Department of Agriculture (Department) adopts amendments to Title 4, Part 1, Chapter 5, §5.5, related to Inspections for the Fuel Quality Program, with changes to the proposal published in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3292). The adopted amendments reduce the required response time for collection of fuel samples in response to fuel quality complaints, and prevent the tampering with potentially contaminated fuel prior to the collection of a fuel sample based on a complaint. The adopted amendments also incorporate the Fuel Quality Penalty and Sanction Matrix into the rule for transparency and convenience of members of the public and stakeholders required to comply with Chapter 5 of the Administrative Code, related to Fuel Quality.

After thoughtful review and consideration, the Department adopts §5.5(a)(2) with changes to the proposal published in the *Texas Register,* which relates to the length of time a fuel facility is required to have a Licensed Service Company (LSC) draw a fuel sample in response to a fuel quality complaint. The adopted rules require a LSC or technician to be present within 3 days of a fuel quality complaint, rather than 5 days (which was previously provided in rule), thus reducing damage to motor vehicles by shortening timelines for testing and remediating potentially contaminated fuel.

In order to increase awareness of the requirements set forth in §5.5, the Department has provided educational outreach and continues to provide compliance assistance to LSCs, retail outlets, and other facilities that dispense motor vehicle fuel. By application of resources in these areas, the Department has enhanced consumer protection demonstrated by a reduction in the number of days regulated facilities take to have a fuel sample drawn by a LSC. Diligence by the regulated community and LSCs in testing fuel quality through implementation of Department safeguards designed to protect the driving public, decreases the public's exposure to contaminated fuel and reduces the individual and societal cost associated with damage to vehicles caused by contaminated fuel. Additionally, the adopted rules enhance public welfare by reducing the time it takes for the Department to respond to and evaluate a motor vehicle fuel complaint.

No other changes were made to the adopted amendments.

During the comment period, the Department met with affected stakeholders and received feedback; however, no written comments were received on the proposal. Prior to the adoption of the amendments, the Texas Food and Fuel Association was consulted regarding the change to §5.5(a)(2).

The amendments are adopted under Agriculture Code, §17.071 which authorizes the Department to adopt fuel quality rules and testing standards for motor fuel that is sold or offered for sale in this state, and §17.155 which authorizes the Department to impose administrative penalties for violations of chapter 17 of the Agriculture Code, related to the Sale and Regulation of Fuel Mixtures, and rules adopted for the regulation of chapter 17.

The code affected by the adoption is Chapter 17 of the Texas Agriculture Code.

§5.5. Inspections.

(a) Fuel sample collection shall be performed by a licensed service company or a licensed service technician, currently licensed by the Department under Chapter 13, Subchapter I of the Texas Agriculture Code.

(1) Routine fuel sample collection: Beginning the day after notification by the Department that a routine fuel quality sample is required, within ten (10) calendar days, a facility must have a sample drawn by a LSC and shipped to a Department approved contracted laboratory.

(2) Complaint fuel sample collection: Beginning the day after notification by the Department that a fuel quality sample must be drawn due to a complaint, within 3 calendar days a facility must have a LSC draw and ship the sample to a Department approved contracted laboratory.

(3) It is a violation to fail or refuse to allow fuel quality testing as prescribed by the Department.

(4) It is a violation to fail to or improperly ship a fuel quality sample as prescribed by the Department.

(b) A Representative of the Commissioner shall conduct labeling inspections to ensure compliance with posting requirements set forth in §17.051 of the Texas Agriculture Code, and 16 CFR Part 306, in accordance with procedures adopted by the Department.

(c) Routine fuel sampling inspections, labeling inspections, and complaint inspections shall occur upon a schedule determined by the Department.

(d) All complaints received by the Department will result in an inspection of the facility and/or fuel blend inspection sampling of the motor fuel(s) identified in the complaint.

(1) Facilities are prohibited from utilizing a LSC with which it shares ownership interests, operations, or an affiliation having power to control the other, to conduct a fuel quality complaint inspection and/or draw fuel quality complaint inspection sample(s) for the facility.

(2) After a facility receives notice from the Department of a fuel quality complaint, the facility is prohibited from remediating or altering the fuel in the storage tank(s) holding the fuel blend(s) which is the subject of the complaint(s) prior to collection of the fuel quality sample after the complaint is received.

(3) After notification of a fuel quality complaint, and prior to the fuel sample collection, the facility is required to retain an adequate amount of fuel in the fuel tank(s) holding the fuel blend(s) which are the subject of the complaint(s) to assure that the LSC can draw a sufficient fuel quality inspection sample(s).

(4) It is a violation by the facility and the LSC to hinder, fail, or refuse to conduct fuel quality complaint testing and sample shipping as prescribed by the Department.

(e) The fill pipe box cover for any automotive fuel storage tank or vessel supplying gasoline or diesel fuel shall be permanently, plainly, and visibly marked in such a manner as to identify what type of gasoline or diesel fuel each storage tank delivers to a particular motor fuel dispenser. For example, the markings may include the words, or abbreviation of the words, regular unleaded, unleaded plus, super unleaded, or a related color code scheme, such as white, blue and red. If the fill pipe box covers are marked by means of a color code scheme, a color code legend shall be conspicuously displayed at the place of business.

(f) Failure to comply with the requirements of this section may result in the imposition of an administrative penalty, license sanction and/or civil or criminal penalties in accordance with Texas Agriculture Code, Chapters 12 and 17. Violations and penalties are set forth as follows:

Figure: 4 TAC §5.5(f)

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 November 26, 2018.

TRD-201805022
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 16, 2018
Proposal publication date: May 25, 2018
For further information, please call: (512) 463-4075

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PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §61.1

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the amendments to §61.1, Definitions, with changes to the proposed text as published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3851). The section will be republished.

The adoption of the new definition provides legal certainty to farmers, processors and consumers when a feed product produced and sold by a farmer is exempt. Products containing toxins or other chemical adulterants for which a rule or action level exits will be subject to regulatory oversight by the Texas Feed and Fertilizer Control Service and does not represent a deviation from past compliance activities.

A letter was received and the Office of the Texas State Chemist June 29, 2018 requesting a 90-day delay in adoption to allow discussion of the rule, which occurred at the Fall Advisory Committee meeting on October 5, 2018. The revised definition limited toxins and chemical adulterants to those for which rules or ac-

tion levels exit. There was no opposition to the revised definition by association representatives in attendance, who submitted the letter.

The amendment is adopted under Texas Agriculture Code §141.004, which grants Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code TAC 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 and Subchapter A, §141.004 is affected by the adopted amendment.

§61.1. Definitions.

Except where otherwise provided, the terms and definitions adopted by the Association of American Feed Control Officials in the last published edition of the annual Official Publication are hereby adopted by reference as the terms and definitions to control in this title. The publication is available from the Association of American Feed Control Officials. In addition, the following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Texas Commercial Feed Control Act, Texas Agriculture Code, Chapter 141, 1981, as amended.

(2) Additive--An ingredient or combination of ingredients added to the basic feed mix or parts thereof to fulfill a specific need which becomes a component of or affects the characteristics of a feed or food if such substance is not generally recognized as safe under the conditions of its intended use.

(3) Ammoniated Corn--The product obtained by treating whole corn containing no more than 500 parts per billion (ppb) aflatoxin with anhydrous ammonia under specified conditions of temperature and pressure approved by the Service. Ammoniated corn is not to be considered a single ingredient product.

(4) Ammoniated Cottonseed--The product obtained by treating whole cottonseed containing no more than 500 parts per billion (ppb) aflatoxin under specified conditions of temperature and pressure approved by the Service. Ammoniated cottonseed is not to be considered a single ingredient product.

(5) Ammoniated Cottonseed Meal--The product obtained when cottonseed meal is treated with anhydrous ammonia until a pressure of 50 pounds per square inch gauge is reached. It is to be used in the feed of ruminants in an amount not to exceed 20% of the total ration. Ammoniated cottonseed meal is not to be considered a single ingredient product.

(6) Annual Products--Commercial feed product packaged in individual containers of five pounds or less only.

(7) Bagged--Enclosure of feed in any container.

(8) Chemical Adulterant--Any compound-natural or synthetic-possessing little or no intrinsic nutritional value, avoidably present at levels inconsistent with its generally accepted use in a feed or unavoidably present at levels in a feed above those authorized by the Service.

(9) Container--A bag, box, carton, bottle, object, barrel, package, apparatus, device, appliance, or other item of any capacity into which a feed is packed, poured, stored, or placed for handling, transporting, or distributing.

(10) Cottonseed, Feed Grade--Sound, mature, unhulled seed of the genus Gossypium left after ginning. Fee fatty acids shall not exceed 12.5%, moisture shall not exceed 20%, and foreign matter shall not exceed 10%.

(11) Feed Product Produced and Sold by a Farmer--Homogeneous, unprocessed and whole grain, whole seed, and unground hay and any hulls not containing toxins or chemical adulterants for which rules or action levels exist are exempt from licensing, labeling and inspection fees. Exempt feed products offered for sale by a farmer must be grown on land solely under the framer's control, and be handled and transported under the farmer's control. Green forage crops thus produced, including ensilage produced from an exempt crop, are also exempt.

(12) Natural--Describes a feed or feed ingredient produced solely by or derived solely from plants, animals, or minerals, whether unprocessed or processed according to generally accepted industry standards, which has not been exposed to ionizing radiation and does not contain any man-made materials except in such amounts as might occur unavoidably in good processing practices. The term is understood to include as "natural" flavors and flavorings so designated under 21 CFR 501.22(a)(3).

(13) Organic--When applied to a product, to a compound, to a mixture of compounds or to a specific constituent used as an ingredient means that the claim of the product, compound, mixture of compounds, or constituent to be organic has been allowed or allowed with restriction by the United States Department of Agriculture's National Organic Program or the Texas Department of Agriculture's Organic Certification Program. (Materials described as organic must still conform to the Texas Commercial Feed Control Act if they are used in feeds.)

(14) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(15) Pet Food--Any commercial feed prepared and distributed for consumption by a dog or cat or an animal normally maintained in a cage or tank in or near the household(s) of the owner such as, but not limited to, gerbils, hamsters, birds, fish, snakes, and turtles.

(16) Salvage--When applied to an ingredient or combination of ingredients, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap. Does not apply to recovered production line products which are suitable for reprocessing.

(17) Service--Texas Feed and Fertilizer Control Service.

(18) Toxin--Any compound causing adverse biological effects including, but not limited to, poisons, carcinogens or mutagens, produced by an organism avoidably present at any level or unavoidably present at levels in a feed above those authorized by the Service.

(19) Weed Seeds--Those seeds declared prohibited or restricted noxious weed seeds by the Texas Agriculture Code, §61.008 (concerning Noxious Weed Seeds).

(20) Wildlife--Any feral animal, any animal not normally considered as domesticated in Texas or any animal living in a state of nature.

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 December 3, 2018.

TRD-201805157

Dr. Timothy Herrman

State Chemist & Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: January 1, 2019

Proposal publication date: June 15, 2018

For further information, please call: (979) 845-1121

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SUBCHAPTER H. ADULTERANTS

4 TAC §61.61

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the amendments to §61.61, Subchapter H, Poisonous or Deleterious Substances deleting (a)(7) without changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7024) and will not be republished.

This rule aligns with other state's regulation of fumonisin, which utilize the Food and Drug Administration (FDA) guidance for fumonisin risk management. As an outcome of the repeal of the Texas fumonisin rule, firms will continue to manage fumonisin risk using FDA guidance.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Agriculture Code §141.004, which grants Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code TAC 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 and Subchapter A, §141.004 is affected by the adopted amendment.

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 December 3, 2018.

TRD-201805149

Dr. Timothy Herrman

State Chemist & Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: January 1, 2019

Proposal publication date: October 26, 2018

For further information, please call: (979) 845-1121

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The Texas State Securities Board adopts an amendment to §109.13(k), concerning limited offering exemptions, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3676).

The amendment to §109.13 amends subsection (k) so that the exemption only applies to offers and sales of federal covered securities pursuant to Securities and Exchange Commission (SEC) Regulation D, Rule 506; removes those provisions within the subsection that are duplicated elsewhere in Regulation D or in §114.4 (relating to federal covered securities); and updates the rule to reflect the current practice followed by the Agency now that almost all of the Form D filings are made through the EFD system.

The amendment to §109.13(k) coordinates provisions of the rule with federal standards and requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5 and 581-7.

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 December 3, 2018.

TRD-201805166

Travis J. Iles

Securities Commissioner

State Securities Board

Effective date: December 23, 2018

Proposal publication date: June 8, 2018

For further information, please call: (512) 305-8303

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.5

The Texas State Securities Board adopts an amendment to §113.5, concerning financial statements, to add a new exemption to the list of types of prior securities offerings that would not disqualify a small business issuer from being eligible to file reviewed financial statements in a later registered offering. The amendment is being adopted without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3679).

The exemption in §139.26, Intrastate Crowdfunding Exemption for SEC Rule 147A Offerings, would not disqualify a "small business issuer" from being eligible to file reviewed (rather than audited) financial statements in a subsequent registration of securities by qualification.

The amendment facilitates capital raising efforts of more small business issuers by allowing these issuers to use reviewed (rather than audited) financial statements in conjunction with a registered offering.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-7.A and 581-28-1. Section 7.A(1)(f)(2) provides the Board with the authority to define and provide requirements for small business issuers permitted to submit reviewed financial statements. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-7 and 581-10.

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 December 3, 2018.

TRD-201805170
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: December 23, 2018
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For further information, please call: (512) 305-8303

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The Texas State Securities Board adopts an amendment to §114.4, concerning filings and fees, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3680). This section will not be republished.

A cross-reference was updated and the rule reflects that the EFD System is now operational.

Cross-references to other rules are accurate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-5.

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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TRD-201805172
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: December 23, 2018
Proposal publication date: June 8, 2018
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.1, §115.3

The Texas State Securities Board adopts amendments to §115.1, concerning general provisions, and §115.3, concerning examinations without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3681).

Crowdfunding portals registered pursuant to §115.20 were added to the definition of "Texas crowdfunding portal;" an unnecessary (repetitive) provision was removed; a cross-reference to the federal Securities Exchange Act of 1934 was updated; and §115.1 will now automatically recognize uniform specialized knowledge examinations administered by the Financial Industry Regulatory Authority ("FINRA") as restricted registration categories.

The examination structure in §115.3 has been simplified and aligned with the examinations administered by FINRA. The FINRA examination changes became effective October 1, 2018.

Although FINRA has eliminated some of their specialized knowledge examinations, FINRA grandfathered and continued the registration of those individuals who were registered in those restricted categories corresponding with the specialized knowledge examinations that were eliminated. Likewise, persons in Texas maintaining a restricted registration in those categories will continue to be eligible for registration in Texas in that restricted capacity following FINRA's elimination of those specialized knowledge examinations.

Section §115.1 reflects that authorized small business development entities created by Section 44 of the Texas Securities Act are included in the definition of "Texas crowdfunding portals;" cross-references to other rules are accurate; and aligns the restricted registration categories with FINRA specialized knowledge examinations. The examination program in §115.3 more closely corresponds to the uniform examinations administered by FINRA, making it easier for applicants entering the securities industry in Texas to understand which examinations are required in the registration category they are pursuing.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment to §115.1 is also adopted under Texas Civil Statutes, Articles 581-12.C and 581-44. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding applicable to authorized small business development entities.

The adopted amendment to §115.1 affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 591-15, 581-18, and 581-44.

The adopted amendment to §115.3 affects Texas Civil Statutes, Article 581-13.

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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TRD-201805175
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: December 23, 2018
Proposal publication date: June 8, 2018
For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.33

The Texas State Securities Board adopts an amendment to §133.33, concerning uniform forms accepted, required or recommended, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3683) and corrected in the June 22, 2018 issue of the *Texas Register* (43 TexReg 4261).

A cross-reference and form title were corrected.

Cross-references contained in the rule are accurate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-5.

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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TRD-201805177
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: December 23, 2018
Proposal publication date: June 8, 2018
For further information, please call: (512) 305-8303

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

19 TAC §105.1011

The Texas Education Agency (TEA) adopts new §105.1011, concerning additional state aid for open-enrollment charter school facilities. The new section is adopted with changes to the proposed text as published in the August 24, 2018 issue of the *Texas Register* (43 TexReg 5469). The adopted new rule implements changes made by House Bill (HB) 21, 85th Texas Legislature, First Called Session, 2017, by defining the most recent performance rating under Texas Education Code (TEC), Chapter 39, Subchapter C, for the purposes of determining open-enrollment charter school facilities funding eligibility.

REASONED JUSTIFICATION. The TEC, §12.106, authorizes the commissioner of education to adopt rules for the administration of state funding for open-enrollment charter schools. HB 21, 85th Texas Legislature, First Called Session, 2017, created a new facilities allotment under TEC, §12.106(d), for open-enrollment charter schools. The allotment is based on the open-enrollment charter school's average daily attendance (ADA) multiplied by the state average interest and sinking (I&S) tax rate imposed by school districts for the current school year. An amount of $60 million was allocated in HB 21 to fund facilities payments to open-enrollment charter schools. If the statewide total exceeds $60 million, the state average I&S tax rate is prorated to result in a total amount to which open-enrollment charter schools are entitled to for the current year equal to $60 million. Pursuant to TEC, §12.106(e), a charter holder is entitled to receive funding for facilities if the most recent overall performance rating assigned to the open-enrollment charter school under TEC, Chapter 39, Subchapter C, reflects at least acceptable performance.

To implement HB 21, adopted new §105.1011 exercises the commissioner's authority under TEC, §12.106(c), to define the most recent rating year for the purposes of determining funding eligibility under TEC, Chapter 39, Subchapter C, as the most recent preliminary overall performance rating issued to the open-enrollment charter school preceding the school year for which funding under TEC, §12.106(d), would be provided.

The adopted new rule removes any ambiguity about which performance rating will be used in the allotment calculation. Since the distribution of the allotment occurs before the final accountability rating for the preceding year is determined, adopted new §105.1011(a) specifies that the preliminary rating will be used to determine funding under TEC, §12.106(d). Subsection (b) specifies that if an appeal to the preliminary rating results in a change to a rating of at least acceptable, then the full amount of the funds will be provided.

In response to public comment, new subsection (c) was added at adoption. The new subsection specifies that TEA will use the most recent final overall performance rating assigned to the open-enrollment charter school under TEC, Chapter 39, Subchapter C, to determine eligibility in cases where the open-enrollment charter school was not rated the preceding school year as a result of a special evaluation by the commissioner because the open-enrollment charter school was in a county declared a natural disaster.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began August 24, 2018, and ended September 24, 2018. Following is a summary of the public comments received and the responses.

Comment: The Texas Charter Schools Association (TCSA) requested that the proposed rule address whether charter districts that are not rated due to the regulations put in place for Hurricane Harvey accountability waivers are still eligible for the additional funding for facilities.

Agency Response: The agency agrees and has modified the rule at adoption. New subsection (c) has been added to address open-enrollment charter schools that are not rated as a result of a special evaluation by the commissioner because the open-enrollment charter school was in a county declared a natural disaster.

Comment: TCSA requested that the commissioner clarify that a single campus district with a rating of "met standard" will be considered to have acceptable performance because in 2018, single campus districts did not receive a district A-F rating.

Agency Response: The agency agrees with recommendation, but it will not result in a change to the proposed language. Per TEC, §39.054(a-4), effective January 1, 2019, single campus districts will receive the A-F rating assigned to the campus. Therefore, in determining eligibility for 2020 there will not need to be a distinction made for multi-campus district charters and single campus district charters. Additionally, single campus charter districts that had a 2018 rating of "met standard" were determined to be eligible for facilities funding for 2019.

Comment: TCSA stated that TEC, §12.106(f)(4), allows the additional facilities funding to be used "for any purpose related to the purchase, lease, sale, acquisition, or maintenance of an instructional facility" but that it is silent as to what qualifies as "maintenance." TCSA asked that the proposed rule define maintenance to include upgrades or improvements to any facilities owned or leased by the charter.

Agency Response: The agency disagrees with defining maintenance as part of the rule because it is outside of the scope of this rule. Allowable maintenance expenditures are set forth in the Financial Accountability System Resource Guide adopted by reference in 19 TAC §109.41, Financial Accountability System Resource Guide.

Comment: An individual opposed facilities funding to charter schools under TEC, §12.106(d).

Agency Response: This comment is outside of the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §12.106(c), which allows the commissioner to adopt rules for the administration of TEC, §12.106; TEC, §12.106(d), as added by House Bill (HB) 21, 85th Texas Legislature, First Called Session, 2017, which establishes the formula to be used to calculate open-enrollment charter school facilities funding; and TEC, §12.106(e), as added by HB 21, 85th Texas Legislature, First Called Session, 2017, which sets forth eligibility to receive open-enrollment charter school facilities funding.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §12.106.

§105.1011. Additional State Aid for Open-Enrollment Charter School Facilities.

(a) For the purpose of determining an open-enrollment charter school's initial eligibility to receive funding as provided in Texas Education Code (TEC), §12.106(e), the most recent overall performance rating assigned to the open-enrollment charter school under TEC, Chapter 39, Subchapter C, is the preliminary overall performance rating issued to the open-enrollment charter school for the school year preceding the school year for which funding under TEC, §12.106(d), would be provided.

(b) If the preliminary rating issued under TEC, Chapter 39, Subchapter C, for the school year preceding the year for which funding under TEC, §12.106(d), would be provided is changed as a result of an accountability appeal to a rating of at least acceptable, then the full amount of the funds will be provided to the open-enrollment charter school.

(c) If the open-enrollment charter school was not rated the preceding school year as a result of a special evaluation by the commissioner of education because the open-enrollment charter school was in a county declared a natural disaster, the most recent overall performance rating assigned to the open-enrollment charter school under TEC, Chapter 39, Subchapter C, is the most recent final overall performance rating issued.

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 November 30, 2018.

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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

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.1, 228.2, 228.30, 228.35

The State Board for Educator Certification (SBEC) adopts amendments to §§228.1, 228.2, 228.30, and 228.35, concerning requirements for educator preparation programs. The amendments to §228.1 and §228.30 are adopted without changes to the proposal text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 3963) and will not be republished. The amendments to §228.2 and §228.35 are adopted with changes. The adopted amendments implement the statutory requirements of Senate Bills (SBs) 7 and 1839 and House Bills (HBs) 2039, 3349, and 1963, 85th Texas Legislature, Regular Session, 2017. The adopted amendments also implement changes based on stakeholder input and the Texas Education Agency (TEA) staff recommendations.

REASONED JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 228, Requirements for Educator Preparation Programs, provide for rules that establish requirements for educator preparation programs (EPPs).

The following is a description of the adopted amendments.

§228.1. General Provisions.

A new subsection (d) allows staff to extend rule deadlines when rules in this chapter cannot be complied with because of a disaster that results in the governor declaring a state of disaster. This amendment allows TEA staff to extend deadlines in this chapter for up to 90 days to accommodate persons in the disaster areas identified by the governor's declaration.

§228.2. Definitions.

The definition of cooperating teacher in §228.2(12) was amended to add the phrase, "including training in how to coach and mentor teacher candidates," to the criteria of the cooperating teacher training. This amendment requires cooperating teachers to be trained on how to coach and mentor teacher candidates, so they could adequately guide and support the candidates throughout their clinical teaching experiences.

The definition of field supervisor in §228.2(16) was amended to clarify that a field supervisor who has certification as a principal and experience as a campus-level administrator may also supervise classroom teacher, master teacher, and reading specialist candidates; and a field supervisor who has certification as a superintendent and experience as a district-level administrator may also supervise principal candidates. While this amendment provides flexibility for EPPs in determining the field supervisor, it also ensures that teacher candidates are supervised by a field supervisor who has experience as a classroom teacher. A technical edit, at adoption, updates a relevant cross reference in §228.2(16).

The definition of internship in §228.2(21) was amended to move the criteria for a successful internship into the appropriate preparation program coursework and training in §228.35(f)(2)(B)(vii). This amendment provides consistency among the requirements for internships, clinical teaching, and practicums.

The definition of mentor in §228.2(23) was amended to add the phrase, "including training in how to coach and mentor teacher candidates," to the criteria of the mentor training. This amendment requires mentors to be trained on how to coach and mentor teacher candidates, so they can adequately guide and support the candidates throughout their internship experiences.

The definition of site supervisor in §228.2(30) was amended to add the phrase, "including training in how to coach and mentor candidates," to the criteria of the site supervisor training. This amendment requires site supervisors to be trained on how to coach and mentor candidates, so they can adequately guide and support the candidates throughout their internship experiences.

§228.30. Educator Preparation Curriculum.

Section 228.30(c)(3) was amended to clarify curriculum requirements for instruction regarding mental health, substance abuse, and youth suicide. The Texas Education Code (TEC), §21.044(c-1), requires EPPs to select training from a list of recommended best practice-based programs and research-based practices. This amendment clarifies that an EPP that acquires training from a provider on the list may use that training on its own if it implements the training as required by the provider.

Section 228.30(c)(7) was amended to incorporate the requirements of the TEC, §21.044(g)(6), as amended by SB 7, 85th Texas Legislature, Regular Session, 2017. The language requires the curriculum for all certification classes to include instruction regarding appropriate relationships, boundaries, and communications between educators and students.

The amendment to §228.30(c)(8) incorporates the requirements of the TEC, §21.044, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017. The language requires the curriculum for all certification classes to include instruction in digital learning. The adopted rule requires EPPs to assess each candidate with a digital literacy evaluation followed by a prescribed digital learning curriculum that must include resources to address any deficiencies identified by the digital literacy evaluation. The instruction must be aligned with the International Society for Technology in Education's (ISTE) standards and provide effective, evidence-based strategies to determine a person's degree of digital literacy. The current ISTE standards for educators and administrators are published on its website at https://www.iste.org/standards.

Section 228.30(d)(4) and §228.30(e) were amended to remove the domains of the Teacher and Administrator Standards. Because these domains are identified in commissioner of education rules, Chapter 149, Subchapters AA and BB, this amendment reduces the amount of redundancy in the rules.

New §228.30(f) incorporates the requirements of the TEC, §21.0489, as amended by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017. The subsection identifies the standards that an EPP must include in its Early Childhood: Prekindergarten-Grade 3 curriculum for candidates who hold a valid standard, provisional, or one-year classroom teacher certificate that has been issued by the SBEC and allows them to teach all subjects in grades prekindergarten, kindergarten, first, second, or third. The curriculum must include the Child Development provision of the Early Childhood Grade 3 Content Standards, the Early Childhood-Grade 3 Pedagogy and Professional Responsibilities Standards, and the Science of Teaching Reading Standards. This amendment implements the statutory requirements of the TEC, §21.0489.

§228.35. Preparation Program Coursework and/or Training.

Section 228.35(a)(6) was amended to broaden the options from which EPPs may select to ensure coursework and training that is offered online is of a high quality. This amendment includes the

certification options that are provided by the Distance Education Accreditation Commission. This amendment provides EPPs that do not offer all their coursework and training online additional cost-effective options for quality assurance.

The amendment to §228.35(b) incorporates the abbreviated program requirements of the TEC, §21.0442(c), as amended by HB 3349, 85th Texas Legislature, Regular Session, 2017. In response to public comment, the adopted rule requires an EPP to provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking initial certification in the classroom teacher certification class in Trade and Industrial Workforce Training. The coursework and/or training requirement is 100 hours fewer than the minimum for all other initial classroom teacher certificates because the statute calls for an abbreviated EPP for Trade and Industrial Workforce Training and because this certificate is only available to individuals with prior wage-earning experience in an occupation they will be teaching.

At proposal, the provisions in §228.35(c) would have allowed an abbreviated route to certification for Marketing: Grades 6-12 and Health Science: Grades 6-12. But in reviewing the proposed amendment to the rule at its September 13-14, 2018, meeting, members of the State Board of Education (SBOE) stated that they felt it was inappropriate to lower the coursework and training requirements for Marketing: Grades 6-12 and Health Science: Grades 6-12 because these certificate areas were not expressly included in HB 3349, 85th Texas Legislature, Regular Session, 2017, and required fewer prerequisite years of work experience. The SBOE voted to reject the proposed amendments to 19 TAC Chapter 228. Therefore, at its October 2018 meeting, and in response to public comments, the SBEC struck those provisions in §228.35 regarding Marketing: Grades 6-12 and Health Science: Grades 6-12 and adopted language that creates an abbreviated route to certification only for the Trade and Industrial Workforce Training certification class. Remaining subsections were re-lettered at adoption.

The amendment to §228.35(e)(1)(C) incorporates the requirements of the TEC, §21.051(b1), as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017. The amended rule allows a teacher candidate to satisfy up to 15 clock-hours of field-based experience by serving as a long-term substitute. A long-term substitute is defined as an individual who has been hired by a public or private school accredited or approved by the TEA to work more than 30 consecutive days in an assignment as a classroom teacher. Long-term substitute experience may occur after the candidate's admission to an EPP or during the two years before the date the candidate is admitted to the EPP. The candidate's experience in instructional or educational activities during the long-term substitute experience must be documented by the EPP. This change implements the provisions of the TEC, §21.051(b-1), and provides consistency among EPPs.

Language was amended in §228.35(e)(2)(A)(i)(I) to increase the minimum required days for a 14-week clinical teaching assignment from 65 days to 70 full days and, in subsection (e)(2)(A)(i)(II), to increase the minimum required days for a 28-week clinical teaching assignment from 130 to 140 half days. These changes reflect the actual number of days and half-days in a five-day week. Current rule allows fewer days to provide flexibility for an exception for maternity leave, military leave, or illness. These changes provide clarity of the expected days required and then allow for an exception due to these circumstances, as reflected in subsection (e)(2)(A)(iv). These amendments still allow flexibility for and consistency among EPPs.

New §228.35(e)(2)(A)(ii) was added to clarify that a full-day clinical teaching assignment must be an average of four hours per day in the subject and grade level of the certification category being sought. This average includes intermissions and recesses but not conference periods and duty-free lunch periods. This amendment allows more assignments to qualify as full-day clinical teaching assignments and provides more consistency between clinical teaching and internship assignments.

New §228.35(e)(2)(A)(iii) was added to specify criteria for a successful clinical teaching assignment. A successful assignment includes the candidate demonstrating proficiency in each of the educator standards for the assignment. Based on stakeholder feedback, if either the field supervisor or cooperating teacher do not recommend the candidate for a standard certificate, the documentation supporting that recommendation must be provided to the candidate for review by all parties. This provides clarification of the recommendation to all parties and provides consistency among the requirements for all certificates.

New §228.35(e)(2)(A)(iv) permits a full day clinical teaching assignment to be up to five days fewer than the minimum of 70 days and a half day clinical teaching assignment to be up to 10 days fewer than the minimum of 140 days. The grounds for permitting fewer than the minimum number of days would be maternity leave, military leave, and illness. This amendment provides flexibility for candidates and EPPs to complete clinical teaching experiences. In response to public comment, the SBEC approved, at adoption, to add bereavement to the list of grounds permitting fewer than the minimum number of days of the teaching assignment.

Language was amended in §228.35(e)(2)(B)(i) to clarify that an internship may be up to 30 school days fewer than the minimum of 180 days if the candidate is hired by the school or district after the first day of school due to maternity leave, military leave, illness, or bereavement. In response to public comment, the SBEC approved, at adoption, to add bereavement to the list of grounds permitting an internship to be fewer than the minimum days. This amendment ensures that candidates are only eligible for the shortened internship if they are hired after the first day of school.

Language was amended in §228.35(e)(2)(B)(ii) to clarify that the beginning date of an internship for the purpose of field supervision would be the first day of instruction with students. Because the requirement for an internship is 180 days, interns may need to participate in professional development before and after the first and last instructional day to meet the requirements of an internship. Because the purpose of field supervision is to provide support to candidates based on observed instructional practices, field supervision does not need to begin until candidates are providing instruction to students.

Language was amended in §228.35(e)(2)(B)(iii) to include intermissions and recesses into the average of four hours a day an individual must teach during an internship. Intermissions and recesses are included in the statutory definition of school day and the educational activities that beginning teachers are expected to perform during intermissions and recesses are included in the classroom teacher educator standards. This change also clarifies that conference periods and duty-free lunch periods do not count toward internship hours. This amendment allows more as-

signments to qualify as internships. A technical edit, at adoption, updates a relevant cross reference in §228.35(e)(2)(B)(iii)(III).

Amended language in §228.35(e)(2)(B)(vi)(II)-(IV) provides candidates and EPPs with more time to provide the required notices related to inactivation of intern and probationary certificates. The time required for candidates to provide an EPP a notice of resignation, non-renewal, or termination of employment or withdrawal from the EPP increases from one business day to seven calendar days. The time required for EPPs to provide candidates with a notice of inactivation of intern or probationary certificates due to resignation, non-renewal, or termination of employment or withdrawal from the EPP increases from one business day to seven calendar days. This amendment provides candidates and EPPs with more flexibility in providing required notices. Technical edits update relevant cross references.

New §228.35(e)(2)(B)(vi)(V) adds notification requirements for EPPs when an internship assignment does not meet requirements. An EPP will need to provide a candidate with notice within seven calendar days of when the EPP knows that an internship assignment does not meet requirements. The notice informs the candidate that the employer will be notified, and the intern or probationary certificate will be inactivated within 30 calendar days. Within one business day of notifying the candidate, an EPP will need to provide similar notice to the employer. Within one business day of notifying the employer, the EPP will need to provide similar notice to TEA staff. This amendment provides consistency among EPPs in providing required notices that result in the inactivation of certificates. This timeline is consistent with other notification requirements related to the inactivation of certificates and is necessary to ensure that programs provide prompt notification to candidates, employers, and TEA staff to prevent a candidate from continuing in an inappropriate assignment.

New §228.35(e)(2)(B)(vii) adds language that was stricken from §228.2(21) describing the criteria for a successful internship. Based on stakeholder feedback, if either the field supervisor or campus supervisor do not recommend the candidate for a standard certificate, the EPP will be required to provide the documentation supporting that recommendation to the candidate for review by all parties. This provides clarification of the recommendation to all parties and provides consistency among the requirements for all certificates.

New §228.35(e)(2)(B)(viii) adds language that incorporates the provisions of the TEC, §21.0491(c)(2), as amended by HB 3349, 85th Texas Legislature, Regular Session, 2017. The adopted language authorizes a candidate seeking a Trade and Industrial Workforce Training certificate to complete an internship at an accredited institution of higher education if the candidate teaches not less than an average of four hours each day, including intermissions and recesses, in a dual credit career and technical instructional setting. Permitting an internship in this setting allows candidates to fulfill the employment eligibility requirement found in the TEC, §21.0491(c)(2)(B), at an institution of higher education. A dual credit career and technical instructional setting would be defined by Part 1, Chapter 4, Subchapter D of this title (relating to Dual Credit Partnerships Between Secondary Schools and Public Schools). This amendment implements the statutory requirements of the TEC, §21.0491(c)(2), and provides consistency among EPPs.

The amendment to §228.35(e)(3) adds requirements for the review, approval, and revocation of clinical teaching exception requests. The review and approval requirements reflect the procedures that TEA staff and the SBEC currently use for requests that have already been approved. The added revocation requirements address how approval of an exception is revoked if an EPP does not meet the conditions of the exception that was approved by the SBEC. This amendment clarifies the process by which clinical teaching exception requests are reviewed, approved, and revoked. This amendment is necessary because the current rules do not provide for a clear process for revoking a clinical teaching exception for a program that does not meet the conditions of the exception. The September 15 deadline tracks the deadline for programs to report data.

The amendment to §228.35(e)(4) adds language clarifying that "candidates" as used in this subsection refers to candidates participating in an internship or clinical teaching assignment. This amendment provides consistency among clinical teaching and internship assignments.

Language was amended in §228.35(e)(8)(D) regarding practicum experiences to specify that if either the field supervisor or site supervisor do not recommend the candidate for a standard certificate, the documentation supporting that recommendation will be provided to the candidate for review by all parties. This will provide clarification of the recommendation to all parties and provide consistency among the requirements for all certificates.

Language was amended in §228.35(g)(8) to define the observation requirements for a full-day clinical teaching assignment that exceeds 14 weeks and extends beyond one semester. A field supervisor from an EPP will need to provide at least two formal observations during the first half of the assignment and two formal observations during the second half of the assignment. This change ensures that candidates receive necessary support and feedback throughout the clinical teaching assignment as a means to foster continuous improvement and would provide consistency among EPPs. Technical edits update relevant cross references.

Language was amended in §228.35(h)(2) to incorporate the requirements of the TEC, §21.044(f-1), as amended by SBs 1839 and 1963, 85th Texas Legislature, Regular Session, 2017. The adopted rule removes the requirement that at least one formal observation by a field supervisor be onsite and face-to-face for a candidate seeking a principal, superintendent, school counselor, school librarian, educational diagnostician, reading specialist, or master teacher certificate. This change implements the statutory requirements of the TEC, §21.044(f-1).

Language was amended in §228.35(h)(3) to clarify that a minimum of three observations are required during a practicum, regardless of the type of certificate that is held by a candidate. Because a practicum can be completed while a candidate seeking an advanced certificate is employed under an intern, probationary, or standard certificate, this clarification is needed since the number of observations for a teacher candidate participating in an internship differs according to the type of certificate the candidate holds. This change clarifies the requirements for candidates seeking an advanced certificate.

New §228.35(i) incorporates the requirements of the TEC, §21.0489, as amended by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017. New §228.35(i)(1) identifies the concepts and themes that coursework and/or training must include. These concepts and themes were recommended to TEA staff by experts in the field of early childhood education. New §228.35(i)(2) requires an EPP to provide a minimum of

150 clock-hours of coursework and/or training for candidates seeking an Early Childhood: Prekindergarten-Grade 3 certificate who hold a valid standard, provisional, or one-year classroom teacher certificate that has been issued by the SBEC and allows them to teach all subjects in grades prekindergarten, kindergarten, first, second, or third. Teachers already certified in these areas have already demonstrated their content proficiency based on the passing of their prior content tests. Additionally, their time in the classroom provides the same real-world teaching experience that is the purpose of field-based experiences and clinical teaching. This reduces the number of hours of additional required training for educators currently certified in these areas. New §228.35(i)(3) requires an EPP to provide a candidate who holds any other classroom teacher certificate the same coursework and training that the EPP would provide for a candidate who is seeking an initial certificate in Early Childhood: Prekindergarten-Grade 3. Due to the specialized nature of early childhood, content knowledge, content pedagogy, and pedagogy practices from outside of the early childhood grade-bands cannot be directly applied to this setting. These changes implement the statutory requirements of the TEC, §21.0489, and provide consistency among programs.

New §228.35(j) defines the coursework and/or training requirements for the Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate. The requirements parallel that which is already being used by the two EPPs actively certifying candidates for the TVI certificate to adequately produce educators.

The TEC, §21.0485, requires an individual to complete coursework in an EPP to be eligible for this certificate. This is the minimum amount of coursework and/or training hours provided by the two programs that actively offer this certificate. The assignment needs to take place in a public school accredited by the TEA or other school approved by the TEA for this purpose. Other schools include private schools accredited by the Texas Private School Accreditation Commission, all Department of Defense Education Activity schools, and schools that meet the approval standards described in 19 TAC §228.35(e)(9)(C) and (D). The TEC, §21.0485, requires an individual to satisfy any other requirements prescribed by the SBEC to be eligible for this certificate. This minimum describes the level of support provided by the two programs that actively offer this certificate and is necessary to ensure sufficient levels of support for the specialized nature of this certificate. This change reflects the requirements of the EPPs that currently offer training for this certificate and also provides consistency among EPPs that may offer the certification in the future.

New §228.35(k) creates provisions for individuals employed as certified educational aides to complete an EPP. New subsection (k)(1) creates a clinical teaching option for candidates who are employed as a certified educational aide to satisfy their clinical teaching assignment requirements through their instructional duties under the supervision of a certified educator. New subsection (k)(1)(A) allows for the assignment requirements of 490 hours to be satisfied through their instructional duties. While the 490-hour requirement is equivalent to the 14-week requirement for other individuals completing clinical teaching, the 490-hour requirement allows an individual more flexibility in completing the assignment while working as a certified educational aide. This change also creates flexibility for school districts and charter schools by allowing them to "grow their own" educational aides into certified teachers and to diversify the pool of new teachers while ensuring sufficient time within the clinical teaching assignment to demonstrate proficiency in each of the educator standards for the assignment.

New §228.35(k)(1)(B) permits an educational aide clinical teaching assignment to be up to 35 hours fewer than the minimum of 490 hours. The grounds for permitting fewer than the minimum number of hours are maternity leave, military leave, and illness. This amendment provides flexibility for candidates and EPPs to complete clinical teaching experiences despite intervening life events.

New §228.35(k)(1)(C) adds criteria for a successful clinical teaching assignment. A successful assignment includes the candidate demonstrating proficiency in each of the educator standards for the assignment. Based on stakeholder feedback, if either the field supervisor or cooperating teacher do not recommend the candidate for a standard certificate, the documentation supporting that recommendation would be provided to the candidate for review by all parties. This provides clarification of the recommendation to all parties and provides consistency among the requirements for all certificates.

New §228.35(k)(2) specifies the coursework and/or training requirements and defines the observation requirements for a 490-hour clinical teaching option for candidates who are employed as a certified educational aide. A field supervisor from an EPP needs to provide at least one formal observation during the first third of the assignment, one formal observation during the second third of the assignment, and one formal observation during the final third of the assignment. This change ensures that candidates receive necessary support and feedback throughout the clinical teaching assignment as a means to foster continuous improvement and provides consistency among EPPs.

Technical edits were also made to 19 TAC Chapter 228 to conform to style and formatting requirements.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. The SBEC also provided an opportunity for registered oral and written comments at its August 3, 2018, meeting in accordance with the SBEC Board Operating Policies and Procedures (BOPP). At its October 5, 2018, meeting, the SBEC accepted public testimony pursuant to the BOPP; however, no registered comments were taken as the comment period closed. The following is a summary of the public comments received on the proposal and the responses.

Comment: The Alternative Certification for Teachers of San Antonio (ACT SA) commented that the legislative intent of the certificate options was to expand certificate options for candidates seeking certification in trades and industry only, and yet the proposed language in §228.35(c) adds Marketing: Grades 6-12 and Health Science: Grades 6-12. ACT SA commented that the addition of these two certificate areas would go beyond the intent of the new statute, and in doing so, may set a precedent of creating pathways to certification that have not been fully investigated and analyzed by stakeholders. ACT SA commented that proposed language in §228.35(c)(2) would allow for many of the required training hours to be provided by a school district, a campus, an educator preparation program (EPP) or another entity approved by Texas Education Agency (TEA), whereas it is the EPP that should be responsible for all training requirements.

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial

Workforce Training certification and has stricken proposed §228.35(c) at adoption.

The SBEC agrees that the entity that may offer the required training hours be limited to an EPP. The SBEC has modified §228.35(b) at adoption to state that an EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate.

Comment: The Texas Association of School Administrators (TASA) commented that House Bill (HB) 3349, as passed by the 85th Texas Legislature, creates an abbreviated pathway to industrial workforce training only; however, the proposed amendments would add two unrelated fields--marketing and health science--bypassing the legislative vetting process. TASA commented that changing legislation through SBEC rule would set a dangerous precedent and would involve very subjective versus objective decision-making. For reference, TASA cited two statutory provisions that provided flexibility in hiring decisions for school district administrators that were appropriately vetted through the legislative process: Texas Education Code (TEC) Chapter 12A, Districts of Innovation, and TEC, §21.055, School District Teaching Permit. TASA commented that the proposed amendments could maintain fidelity with statute by striking language in §228.35(c) related to marketing and health science certificate pathways. TASA recommended involving the Career and Technical Association of Texas and its members in future discussions regarding certifications in marketing and health science areas. TASA commented that language in proposed §228.35(c)(2) should be stricken in order to maintain fidelity with statute, to allow for certainty of adequate candidate training, and to not contradict SBEC rules related to the Accountability System for Educator Preparation by offering 90 hours of coursework training.

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial Workforce Training certification and has stricken proposed §228.35(c) at adoption.

The SBEC agrees that the entity that may offer the required training hours be limited to an EPP. The SBEC has modified §228.35(b) at adoption to state that an EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate.

Comment: The Association of Texas Professional Educators (ATPE) commented that while SBEC has actively worked to raise standards for educator preparation in recent years, it has four concerns with the proposed amendment to §228.35(c): reducing the candidate required training hours; going beyond the abbreviated program allowances of HB 3349; allowing entities other than approved EPPs to provide the remaining 90 hours of required training; and failing to prevent educators receiving certification under the expedited path from easily seeking additional certifications.

ATPE commented that because the hours required of educators before entering the classroom are critical training hours aimed at ensuring these candidates are prepared to teach and because pedagogy involves critical time spent learning to use teaching strategies based on the theories of learning and an understanding of individual student needs, backgrounds, and interests, candidates seeking the Trade and Industrial Workforce Training certificate should not receive less training in this critical area than what is expected of every other candidate. ATPE commented that the addition of the marketing and health science certificates is inappropriate, and the addition has not been properly vetted. ATPE also commented that because the proposal allows entities other than approved EPPs to provide the remaining 90 hours of training that the provision is once again outside of the bounds of the enacting bill, and SBEC's own standards for holding EPPs accountable would be weakened tremendously by the addition of this language. In addition, ATPE commented the SBEC would not have jurisdiction over these entities or the instruction they offer to candidates. ATPE also commented that it would also limit the ability of the SBEC to share quality information with prospective and current EPP candidates, as the entities and instruction would not be held accountable under the Accountability System for Educator Preparation Programs. ATPE commented that the proposal fails to prevent educators certified and trained under this expedited path from easily seeking additional certifications. The TEC states that the SBEC must "provide for a certified educator to qualify for additional certification to teach at a grade level or in a subject area not covered by the educator's certificate upon satisfactory completion of an examination or other assessment of the educator's qualification." This statute and process, often termed "cert-by-exam," allows certified educators to utilize their initial training and potential experience in the classroom to seek additional certifications by passing the appropriate test. This is done based on the recognition that all initial certifications require the same 300 hours of training, including the critical emphasis on pedagogy discussed earlier. This rule would change that and could result in a large number of students and subjects taught by educators trained under the abbreviated 200-hour structure, which is again not the intent of HB 3349.

ATPE provided suggestions to resolve their respective concerns by striking the following language: "80 clock-hours of" in proposed §228.35(c)(1)(B); "90 clock-hours of" in proposed §228.35(c)(2); and "Marketing: Grades 6-12, or Health Science: Grades 6-12" in proposed §228.35(c).

ATPE also suggested striking the following last two sentences in §228.35(c)(2): "The additional coursework and/or training may be provided by a school district, a campus, an EPP, or another entity that is an approved TEA continuing professional education provider. Appropriate documentation such as certificate of attendance, sign-in sheet, or other written verification must be validated by the candidate's EPP." In addition, ATPE recommended resolving its fourth concern by adding the following language as proposed new §228.35(c)(3): "Candidates prepared and certified under this subsection are not eligible for additional certifications under TEC, §21.056."

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial Workforce Training certification and has stricken proposed §228.35(c) at adoption.

As the comment relates to the proposed amendments not preventing educators who receive certification under the expedited path from easily seeking additional certification by examination, the SBEC agrees that the proposed amendments do not preclude certification by examination for these licensees. While this is an issue that should be considered in future rulemaking, these proposed amendments do not provide advance notice of rulemaking regarding this issue sufficient for the public to ascertain whether protection of their interests required them to have re-

quested a hearing and participated therein. It is therefore not an issue that the SBEC can address at this stage in this rulemaking process.

The SBEC agrees that the entity that may offer the required training hours be limited to an EPP. The SBEC has modified §228.35(b) at adoption to state that an EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate.

Comment: The Texas State Teachers Association (TSTA) commented that the proposed amendment to §228.35(c) would undermine the value of the teaching certificate by expediting certification without full realization of the pedagogy; would allow for contradiction to SBEC rules adopted in 2016 that state training be provided by programs rather than other entities; would move beyond the scope of HB 3349; and would allow for teachers with 100 fewer EPP hours to gain additional certificates via the expedited route. TSTA further commented that there are already two options for districts to bypass certification requirements in the adoption of a teaching permit adopted by the legislature in 2015 and the adoption of a District of Innovation plan, allowing a district to exempt itself from teacher certification requirements. TSTA commented that future problems with the proposed amendment to §228.35(c) include moving more workforce training into public schools that already have limited budgets and the ultimate destabilizing of the Texas teacher workforce by moving away from a sustainable teaching force to a transitional one, given new educators leave the profession within five years.

TSTA further commented that the SBEC can maintain a strong stance against attempts to weaken the Texas teaching certificate by restoring the language in §228.35(c) that was presented to the SBEC on March 2, 2018, by removing Marketing: Grades 6-12 and Health Science: Grades 6-12 language and removing provisions for entities other than EPPs to provide training for the Trade and Industrial Workforce Training certificate.

TSTA commented that the proposed language in §228.2(12), (23), and (30) is redundant and unnecessary if the training currently recommended already includes training for the cooperating teacher, mentor, and site supervisor.

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial Workforce Training certification and has stricken proposed §228.35(c) at adoption.

The SBEC agrees that the entity that may offer the required training hours be limited to an EPP. The SBEC has modified §228.35(b) at adoption to state that an EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate.

As the comment relates to the addition of requiring an EPP to include training in how to coach and mentor candidates for cooperating teachers, mentors, and site supervisors, the SBEC agrees that the language is implied in the existing rule. However, by including this language, the SBEC is making the requirement explicit and emphasizing the importance of these individuals adequately guiding and supporting the candidates throughout their clinical teaching experiences.

Comment: The Texas Classroom Teachers Association (TCTA) commented that the proposed amendment to §228.35(c), in particular, the extending of the abbreviated program to include Marketing: Grades 6-12 and Health Science: Grades 6-12 due to "stakeholder feedback from the San Antonio area," exceeds the plain language of the enabling legislation and has not been properly vetted through legislation. TCTA commented that 200 hours of training for full certification is insufficient and alarming. TCTA expressed concern that implications of such include candidates for the Workforce Training certificate who may only have a high school diploma and may need more training, rather than less, in order to learn pedagogy to provide quality instruction, as research shows these teachers make better gains with students. TCTA was also concerned that many courses could be taught by teachers prepared under the abbreviated program, as receiving certification in this manner allows these teachers to obtain certifications in areas besides Marketing and Health Science. TCTA recommended that language regarding the proposed expansion of the abbreviated EPP program to Marketing and Health Science be stricken and that the required number of pre-service training hours for the abbreviated EPP be restored to 180 clock-hours, as described in §228.35(b), which is required for all other teacher certification candidates.

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial Workforce Training certification and has stricken proposed §228.35(c) at adoption.

As the comment relates to 200 hours of training for full certification is insufficient and alarming, the SBEC disagrees. The legislation requires an abbreviated pathway for the Trade and Industrial Workforce Training certificate, and this certificate is only available to individuals with prior wage-earning experience in an occupation they will be teaching.

As the comment relates to educators receiving certification under the expedited path from easily seeking additional certification, the SBEC agrees. While this is an issue that should be considered in future rulemaking, it is outside the scope of the proposed amendments provided by the notices.

Comment: Texas Woman's University (TWU) commented that the proposed amendments be modified to amend the definition of "field supervisor" in proposed §228.2(16) and to amend language in proposed §228.35(f)(2)(A)(iv), §228.35(f)(2)(B)(i), and §228.30(c)(8)(A)-(C).

TWU commented that the list of persons that can be supervised by a campus-level administrator be changed to add school librarian and school counselor. TWU also commented that language concerning educational diagnosticians be added to read: "Educational diagnostician candidates may only be supervised by a field supervisor who holds a valid Educational Diagnostician certification."

TWU recommended that "bereavement" be added to the list of reasons by which an EPP may permit a clinical teaching assignment to be up to 10 half days fewer than the minimum clinical teaching assignment in proposed §228.35(f)(2)(A)(iv) and to the list of reasons by which an EPP may permit an internship up to 30 school days fewer than the minimum in proposed §228.35(f)(2)(B)(i).

TWU also commented that proposed §228.30(c)(8)(A)-(C) should include an instruction implementation date of at least six months to one year since the prescribed curriculum for the International Society for Technology in Education (ISTE) standards and assessment has not yet been provided.

Response: As the comment relates to amending the proposed definition of "field supervisor" in §228.2(16), the SBEC agrees in part. The SBEC agrees that Educational Diagnostician candidates only be supervised by a field supervisor who holds that certification. The current rule explicitly prescribes that unless otherwise specified, a field supervisor shall have current certification in the class in which supervision is provided. While further clarification is an issue that should be considered in future rulemaking, it is outside the scope of the proposed amendments provided by the notices.

As the comment relates to allowing a campus-level administrator to also supervise school librarian and school counselor candidates, the SBEC agrees that this issue should be considered in future rulemaking. It is outside the scope of the proposed amendments provided by the notices.

The SBEC disagrees that programs should not be expected to implement this rule when it becomes effective because programs have been aware that these requirements were coming since the Texas Legislature enacted SB 1839, creating TEC, §21.044(c-2), on June 12, 2017, more than a year before this amendment becomes effective.

The SBEC agrees that "bereavement" be added to the list of reasons by which an EPP may permit a clinical teaching assignment to be fewer than the minimum required days. The SBEC has adopted §228.35(e)(2)(A)(iv) to include bereavement.

Comment: iTeachTEXAS commented that the addition of Marketing: Grades 6-12 and Health Science: Grades 6-12 to §228.35(c) would go beyond the intent of the new statute underlying the change in rule and would establish a precedent of creating additional expedited pathways to certification without determining the need for teachers in those subjects. iTeachTEXAS conveyed its concern as an EPP with providing an attestation of the 90 clock-hours of previous coursework required under §228.35(c)(2) because the proposed rule suggests that the EPP would validate the quality of training provided by a broad array of entities that are approved to provide continuing professional education by TEA. iTeachTEXAS further commented that a mechanism is not in place to flag teachers who would receive expedited certification once marketing and health science teachers take the TExES Pedagogy and Professional Responsibilities EC-12 (160).

Response: The SBEC agrees that the proposed language in §228.35(c) that would add Marketing and Health Science is outside the scope of the legislation for the Trade and Industrial Workforce Training certification and has stricken proposed §228.35(c) at adoption.

The SBEC agrees that the entity that may offer the required training hours be limited to an EPP. The SBEC has modified §228.35(b) at adoption to state that an EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate.

As the comment relates to educators who receive certification under the expedited path from easily seeking additional certification by examination, the SBEC agrees that the proposed amendments do not preclude certification by examination for these licensees. While this is an issue that should be considered in future rulemaking, these proposed amendments do not provide advance notice of rulemaking regarding this issue sufficient for the public to ascertain whether protection of their interests required them to have requested a hearing and participated therein. It is, therefore, not an issue that the SBEC can address at this stage in this rulemaking process.

Comment: The University of Texas at San Antonio (UTSA), College of Education and Human Development, commented that the proposed amendment to §228.30(c)(8) cannot be implemented as written for several reasons, one being that the ISTE is an inadequate measure by which to determine digital literacy because the ISTE standards have no such measure and make no distinction between proficiency and deficiency. UTSA commented that adequate tools for measuring teacher digital literacy exist and provided two options. UTSA commented that the rule is without an implementation date for the digital literacy measurement tool and recommended a date of September 2020, with September 2019 being the earliest, giving programs at least a year for faculty training and preparation. UTSA commented that TEA does not have resources in place to help programs prepare for this implementation and that since TEA requires programs to pay a $55 fee as specified in §229.9(7), TEA is required to offer resources to programs to help them be successful in implementing digital literacy evaluation instruments. UTSA also commented that the ISTE deliberately contrasts the Interstate Teacher Assessment and Support Consortium Standards, which are used to evaluate teachers.

Response: The SBEC disagrees that it can consider any other digital literacy standards other than ISTE due to the explicit and specific requirement of TEC, §21.044(c-2). Further, the SBEC disagrees that programs should not be expected to implement this rule when it becomes effective because programs should have been aware that these requirements were coming since the Texas Legislature enacted SB 1839, creating TEC, §21.044(c-2), on June 12, 2017, more than a year before this amendment becomes effective. The SBEC agrees that the Texas Legislature did not appropriate additional funds to school districts to implement TEC, §21.044(c-2), but these costs are directly caused by the legislation and not by this rule.

Comment: An individual commented that proposed new §228.35(f)(2)(A) should include language that requires the clinical teaching semester to include clinical teaching in both certification areas, when the candidate has a dual assignment. The individual cited an example whereby a candidate teaches both Physical Education and Life Science: Grades 6-12, with Life Science being the primary teaching assignment, yet the student teaching hours are acquired in Physical Education, making the educator ill-equipped to teach Life Science since student teaching hours and experience were not accrued in Life Science. The individual also inquired whether a candidate can actually spend four hours per day student teaching in two certification fields since the school day is defined as being comprised of seven hours.

Response: The SBEC agrees that the proposed rules do not speak to clinical teaching or internships for dual certification fields. While this is an issue that should be considered in future rulemaking, these proposed amendments do not provide advance notice of rulemaking regarding this issue sufficient for the public to ascertain whether protection of their interests required them to have requested a hearing and participated therein. It is, therefore, not an issue that the SBEC can address at this stage in this rulemaking process.

The SBOE took no action on the review of the amendments to 19 TAC §§228.1, 228.2, 228.30, and 228.35 at the November 16, 2018, SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (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, §21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, 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), as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an educator preparation program (EPP) requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.0453, 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), 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, §21.0485, 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), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, 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, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; 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 SB 1839, 85th Texas Legislature, Regular Session, 2017, 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 under supervision; Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the Texas Education Code, §§21.031; 21.041(b)(1); 21.044, as amended by Senate Bills 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.0442(c), as added by House Bill 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.0453; 21.0454; 21.0455; 21.046(b); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050(b) and (c); 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

§228.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(4) Benchmarks--A record similar to a transcript for each candidate enrolled in an educator preparation program documenting the completion of admission, program, certification, and other requirements.

(5) Candidate--An individual who has been formally or contingently admitted into an educator preparation program; also referred to as an enrollee or participant.

(6) Certification category--A certificate type within a certification class; also known as certification field.

(7) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; also known as certification field.

(8) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(9) Clinical teaching--A supervised educator assignment through an educator preparation program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(10) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited institution of higher education is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences.

(11) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(12) Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the educator preparation program (EPP) and campus administrator; who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed cooperating teacher training, including training in how to coach and mentor teacher candidates, by the EPP within three weeks of being assigned to a clinical teacher; who is currently certified in the certification category for the clinical teaching assignment for which the clinical teacher candidate is seeking certification; who guides, assists, and supports the candidate during the candidate's clinical teaching in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the candidate's progress to that candidate's field supervisor.

(13) Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes.

(14) Entity--The legal entity that is approved to deliver an educator preparation program.

(15) Field-based experiences--Introductory experiences for a classroom teacher certification candidate involving, at the minimum, reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in a school setting.

(16) Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. A field supervisor shall have at least three years of experience and current certification in the class in which supervision is provided. A field supervisor shall be an accomplished educator as shown by student learning. A field supervisor with experience as a campus-level administrator and who holds a current certificate that is appropriate for a principal assignment may also supervise classroom teacher, master teacher, and reading specialist candidates. A field supervisor with experience as a district-level administrator and who holds a current certificate that is appropriate for a superintendent assignment may also supervise principal candidates. If an individual is not currently certified, an individual must hold at least a master's degree in the academic area or field related to the certification class for which supervision is being provided and comply with the same number, content, and type of continuing professional education requirements described in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours), §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), and §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities). A field supervisor shall not be employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum. A mentor, cooperating teacher, or site supervisor, assigned as required by §228.35(f) of this title (relating to Preparation Program Coursework and/or Training), may not also serve as a candidate's field supervisor.

(17) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(18) Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(19) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved educator preparation program.

(20) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has pass all required content certification examinations and is completing initial requirements for certification through an approved educator preparation program.

(21) Internship--A paid supervised classroom teacher assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(22) Late hire--An individual who has not been accepted into an educator preparation program before the 45th day before the first day of instruction and who is hired for a teaching assignment by a school after the 45th day before the first day of instruction or after the school's academic year has begun.

(23) Mentor--For an internship candidate, an educator who is collaboratively assigned by the campus administrator and the educator preparation program (EPP); who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed mentor training, including training in how to coach and mentor teacher candidates, by an EPP within three weeks of being assigned to the intern; who is currently certified in the certification category in which the internship candidate is seeking certification; who guides, assists, and supports the candidate during the internship in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the candidate's progress to that candidate's field supervisor.

(24) Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(25) Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree.

(26) Practicum--A supervised educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular class for which a certificate in a class other than classroom teacher is sought.

(27) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved educator preparation program.

(28) School day--If not referring to the school day of a particular public or private school, a school day shall be at least seven hours (420 minutes) each day, including intermissions and recesses.

(29) School year--If not referring to the school year of a particular public or private school, a school year shall provide at least 180 days (75,600 minutes) of instruction for students.

(30) Site supervisor--For a practicum candidate, an educator who has at least three years of experience in the aspect(s) of the certification class being pursued by the candidate; who is collaboratively assigned by the campus or district administrator and the educator preparation program (EPP); who is currently certified in the certification class in which the practicum candidate is seeking certification; who has completed training by the EPP, including training in how to coach and mentor candidates, within three weeks of being assigned to a practicum candidate; who is an accomplished educator as shown by student learning; who guides, assists, and supports the candidate during the practicum; and who reports the candidate's progress to the candidate's field supervisor.

(31) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(32) Texas Essential Knowledge and Skills (TEKS)--The kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.35. Preparation Program Coursework and/or Training.

(a) Coursework and/or training for candidates seeking initial certification in any certification class.

(1) An educator preparation program (EPP) shall provide coursework and/or training to adequately prepare candidates for educator certification and ensure the educator is effective in the classroom.

(2) Coursework and/or training shall be sustained, rigorous, intensive, interactive, candidate-focused, and performance-based.

(3) All coursework and/or training shall be completed prior to EPP completion and standard certification.

(4) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved Texas Education Agency (TEA) continuing professional education provider to a candidate who is considered a late hire. The training provided by the school district and/or campus must meet the criteria described in the Texas Education Code (TEC), §21.451 (Staff Development Requirements) and must be directly related to the certificate being sought.

(5) Each EPP must develop and implement specific criteria and procedures that allow:

(A) military service member or military veteran candidates to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification requirements, provided that the military service, training, or education is directly related to the certificate being sought; and

(B) candidates who are not military service members or military veterans to substitute prior or ongoing service, training, or education, provided that the experience, education, or training is not also counted as a part of the internship, clinical teaching, or practicum requirements, was provided by an approved EPP or an accredited institution of higher education within the past five years, and is directly related to the certificate being sought.

(6) Coursework and training that is offered online must meet, or the EPP must be making progress toward meeting, criteria set for accreditation, quality assurance, and/or compliance with one or more of the following:

(A) Accreditation or Certification by the Distance Education Accrediting Commission;

(B) Program Design and Teaching Support Certification by Quality Matters;

(C) Part 1, Chapter 4, Subchapter P, of this title (relating to Approval of Distance Education Courses and Programs for Public Institutions); or

(D) Part 1, Chapter 7 of this title (relating to Degree Granting Colleges and Universities Other than Texas Public Institutions).

(b) Coursework and/or training for candidates seeking initial certification in the classroom teacher certification class. An EPP shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training. An EPP shall provide a minimum of 200 clock-hours of coursework and/or training for a candidate seeking a Trade and Industrial Workforce Training certificate as specified by §233.14(e) of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)). Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any clinical teaching or internship:

(1) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission or other video or technology-based method; and

(2) 150 clock-hours of coursework and/or training that allows candidates to demonstrate proficiency in:

(A) designing clear, well-organized, sequential, engaging, and flexible lessons that reflect best practice, align with standards and related content, are appropriate for diverse learners and encourage higher-order thinking, persistence, and achievement;

(B) formally and informally collecting, analyzing, and using student progress data to inform instruction and make needed lesson adjustments;

(C) ensuring high levels of learning, social-emotional development, and achievement for all students through knowledge of students, proven practices, and differentiated instruction;

(D) clearly and accurately communicating to support persistence, deeper learning, and effective effort;

(E) organizing a safe, accessible, and efficient classroom;

(F) establishing, communicating, and maintaining clear expectations for student behavior;

(G) leading a mutually respectful and collaborative class of actively engaged learners;

(H) meeting expectations for attendance, professional appearance, decorum, procedural, ethical, legal, and statutory responsibilities;

(I) reflect on his or her practice; and

(J) effectively communicating with students, families, colleagues, and community members.

(c) Coursework and/or training for candidates seeking initial certification in a certification class other than classroom teacher. An EPP shall provide coursework and/or training to ensure that the educator is effective in the assignment. An EPP shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that

is directly aligned to the educator standards for the applicable certification class.

(d) Late hire provisions. A late hire for a school district teaching position may begin employment under an intern or probationary certificate before completing the pre-internship requirements of subsection (b) of this section, but shall complete these requirements within 90 school days of assignment.

(e) Educator preparation program delivery. An EPP shall provide evidence of ongoing and relevant field-based experiences throughout the EPP in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification in the classroom teacher certification class, each EPP shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship or clinical teaching.

(A) Field-based experiences must include 15 clock-hours in which the candidate, under the direction of the EPP, is actively engaged in instructional or educational activities that include:

(i) authentic school settings in a public school accredited by the TEA or other school approved by the TEA for this purpose;

(ii) instruction by content certified teachers;

(iii) actual students in classrooms/instructional settings with identity-proof provisions;

(iv) content or grade-level specific classrooms/instructional settings; and

(v) written reflection of the observation.

(B) Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method. Field-based experience provided by use of electronic transmission or other video or technology-based method must include:

(i) direction of the EPP;

(ii) authentic school settings in an accredited public or private school;

(iii) instruction by content certified teachers;

(iv) actual students in classrooms/instructional settings with identity-proof provisions;

(v) content or grade-level specific classrooms/instructional settings; and

(vi) written reflection of the observation.

(C) Up to 15 clock-hours of field-based experience may be satisfied by serving as a long-term substitute. A long-term substitute is an individual who has been hired by a school or district to work at least 30 consecutive days in an assignment as a classroom teacher. Experience may occur after the candidate's admission to an EPP or during the two years before the date the candidate is admitted to the EPP. The candidate's experience in instructional or educational activities must be documented by the EPP and must be obtained at a public or private school accredited or approved for the purpose by the TEA.

(2) For initial certification in the classroom teacher certification class, each EPP shall also provide at least one of the following.

(A) Clinical Teaching.

(i) Clinical teaching must meet one of the following requirements:

(I) a minimum of 14 weeks (no fewer than 70 full days), with a full day being 100% of the school day; or

(II) a minimum of 28 weeks (no fewer than 140 half days), with a half day being 50% of the school day.

(ii) A clinical teaching assignment as described in clause (i)(I) of this subparagraph shall not be less than an average of four hours each day in the subject area and grade level of certification sought. The average includes intermissions and recesses but does not include conference and duty-free lunch periods.

(iii) Clinical teaching is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor and cooperating teacher recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or cooperating teacher do not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation supporting the lack of recommendation to the candidate and either the field supervisor or cooperating teacher.

(iv) An EPP may permit a full day clinical teaching assignment up to 5 full days fewer than the minimum and a half day clinical teaching assignment up to 10 half days fewer than the minimum if due to maternity leave, military leave, illness, or bereavement.

(B) Internship. An internship must be for a minimum of one full school year for the classroom teacher assignment or assignments that match the certification category or categories for which the candidate is prepared by the EPP.

(i) An EPP may permit an internship of up to 30 school days fewer than the minimum if due to maternity leave, military leave, illness, bereavement, or if the late hire date is after the first day of the school year.

(ii) The beginning date for an internship for the purpose of field supervision is the first day of instruction with students in the school or district in which the internship takes place.

(iii) An internship assignment shall not be less than an average of four hours each day in the subject area and grade level of certification sought. The average includes intermissions and recesses but does not include conference and duty-free lunch periods. An EPP may permit an additional internship assignment of less than an average of four hours each day if:

(I) the primary assignment is not less than an average of four hours each day in the subject area and grade level of certification sought;

(II) the EPP is approved to offer preparation in the certification category required for the additional assignment;

(III) the EPP provides ongoing support for each assignment as prescribed in subsection (g) of this section;

(IV) the EPP provides coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom; and

(V) the employing school or district notifies the candidate and the EPP in writing that an assignment of less than four hours will be required.

(iv) A candidate must hold an intern or probationary certificate while participating in an internship. A candidate must meet the requirements and conditions, including the subject matter knowl-

edge requirement, prescribed in §230.36 of this title (relating to Intern Certificates) and §230.37 of this title (relating to Probationary Certificates) to be eligible for an intern or probationary certificate.

(v) An EPP may recommend an additional internship if:

(I) the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional internship; or

(II) the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship.

(vi) An EPP must provide ongoing support to a candidate as described in subsection (g) of this section for the full term of the initial and any additional internship, unless, prior to the expiration of that term:

(I) a standard certificate is issued to the candidate during any additional internship under a probationary certificate;

(II) the candidate resigns, is non-renewed, or is terminated by the school or district. A candidate must provide the EPP the official notice of resignation or termination within seven calendar days after receipt of the notice from the employing school or district. Within seven calendar days after receipt of the official notice of resignation or termination, an EPP must notify a candidate in writing that the EPP will provide TEA with notice about the resignation or termination and that the intern or probationary certificate will be inactivated by the TEA 30 calendar days from the effective date of the resignation or termination. Within one business day after providing the notice to a candidate, an EPP must email the TEA a copy of the notice to the candidate and a copy of the official notice of the resignation or termination;

(III) the candidate is discharged or is released from the EPP. An EPP must notify a candidate in writing that the candidate is being discharged or released, that the EPP will provide the employing school or district with notice of the discharge or release, that the EPP will provide TEA with notice about the discharge or release, and that the intern or probationary certificate will be inactivated by the TEA 30 calendar days from the effective date of the discharge or release. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of discharge or release and a copy of the notice to the employing school or district;

(IV) the candidate withdraws from the EPP. A candidate must notify the EPP in writing that the candidate is withdrawing from the EPP. Within seven calendar days after receipt of the withdrawal notice, an EPP must notify a candidate in writing that the EPP will provide the employing school or district with notice of the withdrawal, that the EPP will provide TEA with notice about the withdrawal, and that the intern or probationary certificate will be inactivated by the TEA 30 calendar days from the effective date of the withdrawal. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of withdrawal and a copy of the notice to the employing school or district; or

(V) the internship assignment does not meet the requirements described in this subparagraph. Within seven calendar days of knowing that an internship assignment does not meet requirements, an EPP must notify a candidate in writing: that the internship assignment does not meet the requirements; that the EPP will provide the employing school or district with notice; that the EPP will provide the TEA with notice; and that the intern or probationary certificate will be inactivated by the TEA 30 calendar days from the effective date the notice to the candidate was sent by the EPP. Within one business day after providing a candidate with notice, an EPP must provide written notification to the employing school or district that the internship assignment does not meet requirements and that the TEA will inactivate the certificate. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice to the candidate and a copy of the notice to the employing school or district.

(vii) An internship is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor and campus supervisor recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or campus supervisor do not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation supporting the lack of recommendation to the candidate and either the field supervisor or campus supervisor.

(viii) An internship for a Trade and Industrial Workforce Training certificate may be at an accredited institution of higher education if the candidate teaches not less than an average of four hours each day, including intermissions and recesses, in a dual credit career and technical instructional setting as defined by Part 1, Chapter 4, Subchapter D of this title (relating to Dual Credit Partnerships Between Secondary Schools and Public Schools).

(3) An EPP may request an exception to the clinical teaching option described in this subsection.

(A) Submission of Exception Request. The request for an exception must include an alternate requirement that will adequately prepare candidates for educator certification and ensure the educator is effective in the classroom. The request for an exception must be submitted in a form developed by the TEA staff that shall include:

(i) the rationale and support for the alternate clinical teaching option;

(ii) a full description and methodology of the alternate clinical teaching option;

(iii) a description of the controls to maintain the delivery of equivalent, quality education; and

(iv) a description of the ongoing monitoring and evaluation process to ensure that EPP objectives are met.

(B) Review, Approval, and Revocation of Exception Request.

(i) Exception requests will be reviewed by TEA staff, and the TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the exception should be approved. The SBEC may:

(I) approve the request;

(II) approve the request with conditions;

(III) deny approval of the request; or

(IV) defer action on the request pending receipt of further information.

(ii) If the SBEC approves the request with conditions, the EPP must meet the conditions specified in the request. If the EPP does not meet the conditions, the approval is revoked.

(iii) If the SBEC approves the request, the EPP must submit a written report of outcomes resulting from the clinical teaching exception to the TEA by September 15 of each academic year. If the EPP does not timely submit the report, the approval is revoked.

(iv) If the SBEC does approve the exception or an approval is revoked, an EPP must wait at least six months from the date of the denial or revocation before submitting a new request.

(4) Candidates participating in an internship or a clinical teaching assignment need to experience a full range of professional responsibilities that shall include the start of the school year. The start of the school year is defined as the first 15 instructional days of the school year. If these experiences cannot be provided through clinical teaching or an internship, they must be provided through field-based experiences.

(5) An internship or clinical teaching experience for certificates that include early childhood may be completed at a Head Start Program with the following stipulations:

(A) a certified teacher is available as a trained mentor;

(B) the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(C) the Head Start program teaches three- and four-year-old students; and

(D) the state's prekindergarten curriculum guidelines are being implemented.

(6) An internship or clinical teaching experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(7) An internship or clinical teaching experience shall not take place in a setting where the candidate:

(A) has an administrative role over the mentor or cooperating teacher; or

(B) is related to the field supervisor, mentor, or cooperating teacher by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(8) For certification in a class other than classroom teacher, each EPP shall provide a practicum for a minimum of 160 clock-hours whereby a candidate must demonstrate proficiency in each of the educator standards for the certificate class being sought.

(A) A practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(B) A practicum shall not take place in a setting where the candidate:

(i) has an administrative role over the site supervisor; or

(ii) is related to the field supervisor or site supervisor by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(C) An intern or probationary certificate may be issued to a candidate for a certification class other than classroom teacher who meets the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.37 of this title.

(i) A candidate for an intern or probationary certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.

(ii) An EPP may recommend an additional practicum under a probationary certificate if:

(I) the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional practicum; or

(II) the EPP certifies that the first practicum was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional practicum.

(D) A practicum is successful when the field supervisor and the site supervisor recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or site supervisor does not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation supporting the lack of recommendation to the candidate and either the field supervisor or site supervisor.

(9) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, clinical teaching, and/or practicum.

(B) An EPP may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards.

(C) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the EPP to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located outside the United States, as a site for clinical teaching, internship, or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(f) Mentors, cooperating teachers, and site supervisors. In order to support a new educator and to increase educator retention, an EPP shall collaborate with the campus or district administrator to assign each candidate a mentor during the candidate's internship, assign a cooperating teacher during the candidate's clinical teaching experience, or assign a site supervisor during the candidate's practicum. If an individual who meets the certification category and/or experience criteria for a cooperating teacher, mentor, or site supervisor is not available, the EPP and campus or district administrator shall assign an individual who most closely meets the criteria and document the reason for selecting an individual that does not meet the criteria. The EPP is responsible for providing mentor, cooperating teacher, and/or site supervisor training that relies on scientifically-based research, but the program may allow the training to be provided by a school, district, or regional education service center if properly documented.

(g) Ongoing educator preparation program support for initial certification of teachers. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. For each formal observation, the field supervisor shall 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. Neither the pre-observation conference nor the post-observation conference need to be onsite. For candidates participating in an internship, the field supervisor shall provide a copy of the written feedback to the candidate's supervising campus administrator. Formal observations by the field supervisor conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. In a clinical teaching experience, the field supervisor shall collaborate with the candidate and cooperating teacher throughout the clinical teaching experience. For an internship, the field supervisor shall collaborate with the candidate, mentor, and supervising campus administrator throughout the internship.

(1) Each formal observation must be at least 45 minutes in duration, must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(2) An EPP must provide the first formal observation within the first third of all clinical teaching assignments and the first six weeks of all internship assignments.

(3) For an internship under an intern certificate or an additional internship described in subsection (e)(2)(B)(v)(I) of this section, an EPP must provide a minimum of three formal observations during the first half of the internship and a minimum of two formal observations during the last half of the internship.

(4) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(B)(v)(II) of this section, an EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment.

(5) If an internship under an intern certificate or an additional internship described in subsection (e)(2)(B)(v)(I) of this section involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of three observations in each assignment. For each assignment, the EPP must provide at least two formal observations during the first half of the internship and one formal observation during the second half of the internship.

(6) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(B)(v)(II) of this section that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of one formal observation in each of the assignments during the first half of the assignment and a minimum of one formal observation in each assignment during the second half of the assignment.

(7) For a 14-week, full-day clinical teaching assignment, an EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment. For an all-level clinical teaching assignment in more than one location, a minimum of two formal observations must be provided during the first half of the assignment and a minimum of one formal observation must be provided during the second half of the assignment.

(8) For a 28-week, half-day clinical teaching assignment or a full-day clinical teaching assignment that exceeds 14 weeks and extends beyond one semester, an EPP must provide a minimum of two formal observations during the first half of the assignment and a minimum of two formal observations during the last half of the assignment.

(h) Ongoing educator preparation program support for certification in a certification class other than classroom teacher. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first quarter of the assignment. For each formal observation, the field supervisor shall 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 site supervisor. Neither the pre-observation conference nor the post-observation conference need to be onsite. Formal observations conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. The field supervisor shall collaborate with the candidate and site supervisor throughout the practicum experience.

(1) Formal observations must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(2) If a formal observation is not conducted on the candidate's site in a face-to-face setting, the formal observation may be provided by use of electronic transmission or other video or technology-based method. A formal observation that is not conducted on the candidates' site in a face-to-face setting must include a pre- and post-conference.

(3) Regardless of the type of certificate held by a candidate during a practicum, an EPP must provide a minimum of one formal observation within the first third of the practicum, one formal observation within the second third of the practicum, and one formal observation within the final third of the practicum.

(i) Coursework and/or training for candidates seeking Early Childhood: Prekindergarten-Grade 3 certification.

(1) In support of the educator standards that are the curricular basis of the Early Childhood: Prekindergarten-Grade 3 certificate, an EPP shall integrate the following concepts and themes throughout the coursework and training:

(A) using planning and teaching practices that support student learning in early childhood, including:

(i) demonstrating knowledge and skills to support child development (birth-age eight) in the following areas:

(I) brain development;

(II) physical development;

(III) social-emotional learning; and

(IV) cultural development;

(ii) demonstrating knowledge and skills of effective, research supported, developmentally appropriate instructional approaches to support young students' learning, including, but not limited to:

(I) intentional instruction with clear learning goals;

(II) project-based learning;

(III) child-directed inquiry;

(IV) learning through play; and

(V) integration of knowledge across content areas;

(iii) demonstrating knowledge and skills in implementing instruction tailored to the variability in learners' needs, including, but not limited to, small group instruction;

(iv) demonstrating knowledge and skills in early literacy development and pedagogy, including:

(I) demonstrating effective ways to support language development, particularly oral language development, including, but not limited to, growth in academic vocabulary, comprehension, and inferencing abilities; and

(II) demonstrating effective ways to support early literacy development, including letter knowledge, phonological awareness, early writing, and decoding;

(v) demonstrating knowledge and skills in early mathematics and science development and pedagogy;

(vi) demonstrating knowledge and skills in developing and implementing pedagogical approaches for students who are English learners and/or bilingual; and

(vii) demonstrating knowledge and skills in developing and implementing pedagogical approaches for students who have or are at risk for developmental delays and disabilities;

(B) assessing the success of instruction and student learning through developmentally appropriate assessment, including:

(i) demonstrating knowledge of multiple forms of assessment, the information that each form of assessment can provide about a student's learning and development, and how to conceive, construct, and/or select an assessment aligned to standards that can demonstrate student learning to stakeholders;

(ii) demonstrating knowledge in how to use assessments to inform instruction to support student growth; and

(iii) demonstrating knowledge and application of children's developmental continuum in the analysis of assessment results utilizing a variety of assessment types to gain a full understanding of students' current development and assets;

(C) creating developmentally appropriate learning environments, including:

(i) demonstrating knowledge and skills in supporting learners' development of self-regulation and executive function (e.g., behavior, attention, goal setting, cooperation);

(ii) demonstrating knowledge and skills in designing, organizing, and facilitating spaces for learning, particularly small group learning, in both indoor and outdoor contexts; and

(iii) demonstrating knowledge and skills in developing learning environments that support English learners' development, including structures to support language development and communication;

(D) working with families, students, and the community through:

(i) teacher agency and teacher leadership;

(ii) research-based family engagement practices;

(iii) understanding the capabilities of students through parent and community input; and

(iv) the development and modeling of responsive relationships with children; and

(E) using a diversity and equity framework, such as:

(i) demonstrating knowledge and skills in creating early learning communities that capitalize on the cultural knowledge and strengths children bring to the classroom;

(ii) demonstrating knowledge and skills in creating an early learning environment that reflects the communities in which they work; and

(iii) demonstrating knowledge and skills in how to access the knowledge children and families bring to school.

(2) An EPP shall provide each candidate who holds a valid standard, provisional, or one-year classroom teacher certificate specified in §230.31 of this title (relating to Types of Certificates) in a certificate category that allows the applicant to teach all subjects in Prekindergarten, Kindergarten, Grade 1, Grade 2, or Grade 3 with a minimum of 150 clock-hours of coursework and/or training that is directly aligned to the educator standards as specified in Chapter 235, Subchapter B, Divi-

sion 1, of this title (relating to Early Childhood: Prekindergarten-Grade 3) and that is based on the concepts and themes specified in subsection (i)(1) of this section. A clinical teaching, internship, or practicum assignment is not required for completion of program requirements.

(3) An EPP shall provide each candidate who holds a valid standard, provisional, or one year classroom teacher certificate specified in §230.31 of this title in a certificate category that does not allow the candidate to teach all subjects in Prekindergarten, Kindergarten, Grade 1, Grade 2, or Grade 3 coursework and/or training as specified in subsections (a) and (b) of this section that is directly aligned to the educator standards as specified in Chapter 235, Subchapter B, Division 1, of this title and that is based on the concepts and themes specified in subsection (i)(1) of this section, a clinical experience as specified in subsection (e)(2) of this section, a mentor or cooperating teacher as specified in subsection (f) of this section, and ongoing support as specified in subsection (g) of this section.

(j) Coursework and/or training for candidates seeking a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certification.

(1) An EPP must provide a minimum of 300 hours of coursework and/or training related to the educator standards for that certificate adopted by the SBEC.

(2) An EPP shall provide a clinical experience of at least 350 clock-hours in a supervised educator assignment in a public school accredited by the TEA or other school approved by the TEA for this purpose. A TVI certification candidate must demonstrate proficiency in each of the educator standards for the certificate being sought during the clinical experience. A clinical experience is successful when the field supervisor recommends to the EPP that the TVI certification candidate should be recommended for a TVI supplemental certification.

(A) An EPP will provide guidance, assistance, and support for the TVI certification candidate by assigning a cooperating teacher and/or providing individual or group consultation. The EPP is responsible for providing training to cooperating teachers and/or consultation providers.

(B) An EPP will collaborate with the program coordinator for the Texas School for the Blind and Visually Impaired Statewide Mentor Program to assign a TVI mentor for the TVI certification candidate. The Texas School for the Blind and Visually Impaired Statewide Mentor Program is responsible for providing training for all TVI mentors.

(C) An EPP will provide ongoing support for the TVI certification candidate. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first quarter of the assignment. For each formal observation, the field supervisor shall participate in an individualized pre-observation conference with the candidate; document educational practices observed; and provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate. Neither the pre-observation conference nor the post-observation conference need to be onsite. Formal observations conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(i) Formal observations must be at least 135 minutes in duration in total throughout the clinical experience and must be conducted by the field supervisor.

(ii) If a formal observation is not conducted on the candidate's site in a face-to-face setting, the formal observation may be provided by use of electronic transmission or other video or technology-based method. A formal observation that is not conducted on the candidates' site in a face-to-face setting must include a pre- and post-conference.

(iii) An EPP must provide a minimum of one formal observation within the first third of the clinical experience, one formal observation within the second third of the clinical experience, and one formal observation within the final third of the clinical experience.

(k) Candidates employed as certified educational aides.

(1) Clinical Teaching Assignment. Candidates employed as certified educational aides may satisfy their clinical teaching assignment requirements through their instructional duties.

(A) If an EPP permits candidates employed as certified educational aides, as defined by Chapter 230, Subchapter E, of this title (relating to Educational Aide Certificate), to satisfy the clinical teaching assignment requirements through their instructional duties, the clinical teaching assignment must be for a minimum of 490 hours (14-week equivalent).

(B) An EPP may permit an educational aide employed in a clinical teaching to be excused from up to 35 of the required hours due to maternity leave, military leave, or illness.

(C) Clinical teaching is successful when the candidate demonstrates proficiency in each of the educator standards for the assignment and the field supervisor and cooperating teacher recommend to the EPP that the candidate should be recommended for a standard certificate. If either the field supervisor or cooperating teacher do not recommend that the candidate should be recommended for a standard certificate, the person who does not recommend the candidate must provide documentation supporting the lack of recommendation to the candidate and either the field supervisor or cooperating teacher.

(2) Coursework and Training. An EPP must provide coursework and/or training as specified in subsections (a) and (b) of this section, a clinical experience as specified in subsection (e) of this section, a cooperating teacher as specified in subsection (f) of this section, and ongoing support as specified in subsection (g) of this section. An EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment.

(l) Exemptions.

(1) Under the TEC, §21.050(c), a candidate 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, is exempt from the requirements of this chapter relating to field-based experience, internship, or clinical teaching.

(2) Under the TEC, §21.0487(c)(2)(B), a candidate's employment by a school or district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an EPP or while the person is enrolled in an EPP is exempt from any clinical teaching, internship, or field-based experience program requirement.

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
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For further information, please call: (512) 475-0914

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) adopts amendments to §§230.21, 230.23, 230.36, 230.41, 230.53, 230.101, 230.111, and 230.113, concerning professional educator preparation and certification. The amendments to §§230.21, 230.23, 230.36, 230.41, 230.53, 230.101, 230.111, and 230.113 are adopted without changes to the proposal text as published in the August 24, 2018 issue of the *Texas Register* (43 TexReg 5470) and will not be republished. The adopted amendments provide necessary updates to certification and/or testing requirements and align SBEC rules where applicable with provisions from recent legislation.

REASONED JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 230 are currently organized as follows: Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter C, Assessment of Educators; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. These eight subchapters provide for rules that establish guidelines and procedures for certification requirements, fees, permits, educational aides, and assignment criteria relating to professional educator preparation and certification.

The following is a description of the amendments to Subchapters C, D, E, G, and H.

Subchapter C, Assessment of Educators.

The purpose of Subchapter C, Assessment of Educators, is to provide the examination requirements for Texas educator certificate issuance. New §230.21(a)(1)(A) clarifies that canceled examination scores are not considered retakes for purposes of the five-time limit, so candidates will not be penalized when illness or other unexpected events cause them to have to cancel their results. New §230.21(a)(1)(B) exempts piloted examinations from the retake limit to incentivize candidates to take the piloted examinations so that the agency can get the best data possible for purposes of developing and improving the examinations. New §230.21(a)(1)(C) clarifies that there is no test attempt/retake limit for the Trade and Industrial Workforce Training certificate as mandated through provisions in House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017.

Changes to the figure in §230.21(e) add the new certificate and endorsement for Principal as Instructional Leader and identify the required examinations for its issuance. A technical edit was made to the figure for ease of use and readability.

The amendment to §230.21(g) introduces a new heading to emphasize the importance of ethical behavior as it relates to all aspects of educator testing and to accommodate new subsection (g)(4)(B) that addresses failure to pay test costs and fees required by this chapter or the testing vendor. The amendment to subsection (g)(1) adds scoring to the list of assessment activities that an educator or candidate should keep secure. Subsections have been relettered accordingly. A technical edit to §230.23(1), Testing Accommodations for Persons with Dyslexia, was made to update the statutory reference from Texas Education Code (TEC), §51.970, to Texas Occupations Code, §54.003.

Subchapter D, Types and Classes of Certificates Issued.

The purpose of Subchapter D, Types and Classes of Certificates Issued, is to identify types and classes of certificates issued in Texas. This subchapter also identifies some of the temporary credentials issued as individuals complete requirements to obtain a Texas standard certificate.

§230.36. Intern Certificates.

Due to the anticipated rigor of new assessments being developed to align with certification for Principal as Instructional Leader, new §230.36(e)(4)(A) and (B) provides a transition period of December 1, 2018 through September 1, 2019, before requiring successful completion of the new TExES Principal Examination (268) for issuance of the intern certificate. Effective September 1, 2019, candidates seeking issuance of the intern certificate for Principal as Instructional Leader will be required to pass the TExES Principal as Instructional Leader Examination (268).

§230.41. Visiting International Teacher Certificates.

New §230.41(a) replaces the current wording and defines the Visiting International Teacher (VIT) Program as a J-1 Visa Exchange Visitor Program officially approved by the United States Department of State (DoS). The DoS has specific requirements to allow organizations from approved countries to apply for designation of sponsorship to administer an exchange visitor program for the teacher category. The application fee for designation or re-designation status as an Exchange Visitor Program Sponsor is $3,982, and the Exchange Visitor Status Change Request fee is $367. Both of these fees are paid directly to the DoS.

With the rule changes, entities interested in sponsoring a VIT program in Texas will need approval from the DoS prior to contacting Texas Education Agency (TEA) staff regarding issuance of the SBEC-approved VIT certificate. The DoS requires an entity seeking approval as an Exchange Visitor Program Sponsor to provide extensive documentation confirming experience to successfully run a VIT program, proof of financial stability, and a clear background check.

Subsection (b) retains information on requirements that must be met by the individual seeking issuance of a VIT certificate. Subsection (b)(1) includes requirements for general certificate issuance found in §230.11(b)(1)-(4) that are also relevant to the VIT certificate. Section 230.11(b)(5) regarding demonstration of English language proficiency is not included in the rules to allow VIT program sponsors the flexibility to use assessments of English language proficiency identified in their original application approved by the DoS.

Subsection (b)(2) confirms an individual must be recommended for the VIT certificate by a school district participating in the VIT Program. Subsection (b)(3) adds the United States Department of Education to the entities that recognize accrediting organizations that confirm degree equivalencies for credentials issued in other countries. Subsection (b)(4) requires that English language proficiency and subject matter competence be verified by the VIT Program sponsor officially approved by the DoS and the employing school district. Subsection (b)(5) retains the required verification of criminal activity clearance from the country of origin. Subsection (b)(5) was deleted to remove reference to federal requirements under the No Child Left Behind Act that are no longer in place.

Subsection (c) was clarified to state school districts that recommend an individual for a VIT certificate have a critical role in providing those teachers with the necessary supervision, support, and feedback to ensure success in his or her role.

The current wording of subsection (d) was retained to confirm TEA staff's administrative role in establishing procedures that support participation in the VIT program and issuance of the VIT certificate.

New subsection (e) confirms the VIT certificate is valid for three years upon issuance and provides an option for two one-year extensions for all individuals actively enrolled in and in good standing with a VIT program as verified by the program sponsor and the employing school district. Subsection (f) retains wording that the holder of a VIT certificate is also eligible for issuance of a one-year certificate through the out-of-country credentials review process, should he or she wish to pursue a Texas standard certificate.

Subchapter E, Educational Aide Certificate.

The purpose of Subchapter E, Educational Aide Certificate, is to outline the general requirements for the recommendation, issuance, and renewal of educational aide certificates. The amendment to §230.53(c) and (e) clarifies that the determination of English language proficiency is the responsibility of the employing school district. This clarification was needed because individuals are recommended for certificate issuance by the local school district, and the employing district should retain flexibility to identify staff best suited to meet the needs of districts and the students that they serve.

An amendment was made to subsection (e) to update the reference to §230.11.

Subchapter G, Certificate Issuance Procedures.

The purpose of Subchapter G, Certificate Issuance Procedures, is to identify the general procedures for issuance of certificates; to confirm the roles of educator preparation programs (EPPs) in the recommendation of their candidates for certification; to highlight the process for dating and issuing certificates and permits; to establish in rule the fees for various certification services; to outline the process for submitting fees for correction of a certificate or permit issued in error; and to identify requirements for issuance of additional certificates based on examination only.

Most of the rules in this subchapter have remained the same; however, new subsection (c)(1)-(5) was added to 19 TAC §230.101, Schedule of Fees for Certification Services, listing the examination testing fees required for issuance of the different categories of SBEC-approved certificates. The testing fees listed in subsection (c)(1)-(5) are amounts for the new educator testing contract awarded to NCS Pearson. The Performance Assessment for School Leaders (PASL) is a national assessment that will be used by Texas to satisfy a portion of the testing requirements for the Principal as Instructional Leader certificate and endorsement. The testing fee of $375 will be paid directly to the testing vendor, Educational Testing Services (ETS), awarded the new educator testing contract for performance assessments for administrator and student services certificates.

The testing fees listed in subsection (c)(3) and (4) are for future tests that will be redesigned to include an enhanced selected-response/constructed-response approach for assessment to determine preparedness and readiness for licensure. The fees in subsection (c)(3) and (4) will have an impact on future candidates once tests have been developed and test passing standards have been adopted by the commissioner to use these tests as requirements for issuance of licensure.

The TEA is required by TEC, §21.041, to collect testing fees in order to fund the certification functions of the SBEC. The testing fees in subsection (c)(1) and (2) reflect changes to the $131 and $65 fees per test administered under the current contract that expires on August 31, 2018. These fee reductions provide the majority of certification candidates a cost savings of $15 and $7 per test administered.

Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States.

The purpose of Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States, is to outline the process for individuals already certified to teach in other states to obtain Texas certification. Most of the rules in this subchapter have remained the same, but a few minor changes have been made.

A technical edit to §230.111(d) eliminates the words "must be" to improve readability.

An amendment to §230.113, Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States, clarifies that individuals certified outside the state may qualify for an exemption from required Texas examinations if they meet requirements specified in 19 TAC Chapter 152, Commissioner's Rules Concerning Examination Requirements, §152.1001, Exceptions to Examination Requirements for Individuals Certified Outside the State.

These minor edits provide alignment and support to provisions included in the Commissioner's Rules for individuals currently certified outside the state.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 24, 2018, and ended September 24, 2018. The SBEC also provided an opportunity for registered oral and written comments at its October 5, 2018 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.

A total of 63 public comments related to Subchapter D were submitted. One comment on the intern certificate for Principal as Instructional Leader and 62 comments on the Visiting International Teacher (VIT) certificate were received.

Comment on Intern Certificate for Principal as Instructional Leader

Comment: A representative from iTeachTexas commented that the proposed new §230.36(e)(4)(B) creates a new requirement that a candidate pass the Principal as Instructional Leader assessment prior to issuance of the intern certificate, which will inappropriately limit a candidate's ability to qualify for an internship. The commenter recommended that the SBEC allow a candidate to take the Principal as Instructional Leader assessment at any point in the principal preparation program, even prior to enrollment, in the same way the SBEC allows teacher candidates to take the Pedagogy and Professional Responsibilities examination.

Response: The SBEC disagrees and maintains language as proposed. The rule change may require some educator preparation programs to revisit educator preparation and the process to determine a candidate's "readiness to test" status for eligibility to serve in an internship assignment. It is reasonable and appropriate to require a candidate to demonstrate proficiency through successful completion of Test 268, Principal as Instructional Leader, prior to serving in the role of campus leader.

Comments in Support of the Proposed Amendments Concerning the Visiting International Teacher Certificate

The SBEC received 62 comments in support of the proposed amendments for the VIT certificate categorized as follows: support for the proposed amendments; support for the option to extend the certificate two additional years; and support for options to demonstrate English language proficiency.

Comment: Two commenters, one library media specialist, and one charter school employee expressed support for the proposed amendments in their entirety. The commenters stated the VIT program benefitted students, teachers, and employing districts.

Response: The SBEC agrees and maintains language as proposed. The amendments align with sentiments shared through public comments and provide further clarity of the rules for the VIT certificate.

Comment: Sixty-two commenters, listed as follows, stated their support for a two-year extension of the certificate: six VIT certificate holders from Houston Independent School District (ISD); one administrator, one recruitment specialist, and four VIT certificate holders from Tyler ISD; three VIT certificate holders from Austin ISD; six VIT certificate holders from International Leadership of Texas; one principal and one VIT certificate holder from Ector County ISD; 20 VIT certificate holders from Dallas ISD; 18 additional VIT certificate holders who did not specify their employing district; and one representative from the Spain Ministry of Education. Commenters highlighted the importance of the VIT program and the cultural exchange it offers participating districts; the ability to fill high needs areas with VIT certificate holders and make positive impacts on student learning; and the opportunities for teacher mentorship and shared learning experiences. Commenters also stated that the option to extend the VIT certificate would be a benefit to Texas students and their teachers.

Response: The SBEC agrees and maintains language as proposed. The amendments provide options for a two-year extension of the certificate allowing districts additional flexibility in staffing for high needs areas. The cultural exchange provided by the VIT Program is important and its impact on students is positive. The amendments align with sentiments shared through public comments and provide further clarity of the rules for the visiting international teacher certificate.

Comment: Seven individuals shared their support for the use of other commonly used assessments (e.g., International English Language Testing System, Test for International Communication) in addition to the Test of English as a Foreign Language (TOEFL) to demonstrate English language proficiency. Of the seven commenters, one VIT certificate holder from Houston ISD shared the impact on his district after losing three incredible teachers that had to exit the VIT program because they did not pass the TOEFL; one VIT certificate holder from Dallas ISD shared her personal struggle to obtain the TOEFL speaking score of 26; another VIT certificate holder from Dallas explained the impact of losing eligibility to remain in the program without successful completion of the TOEFL; one Dallas ISD VIT certificate holder recommended an exemption from the TOEFL requirement for participants who will return to Spain upon completion of the exchange program; another VIT certificate holder from Dallas ISD stated a teacher who is in good standing with the school and has been recommended to continue in the program should be exempt from the TOEFL requirement; one VIT certificate holder from Dallas shared he passed an advanced Cambridge English test to be admitted into the VIT program and feels a TOEFL requirement is redundant; two VIT certificate holders from Dallas ISD stated they will return to Spain upon completion of their eligibility for the VIT program and do not believe it makes sense to require the TOEFL under such circumstances; and a representative from the Spain Ministry of Education shared that VIT certificate holders have already been assessed for English language proficiency to meet requirements for the Teacher Exchange Program established by the United States Department of State.

Response: The SBEC agrees and maintains language as proposed. The amendments offer flexibility for VIT certificate holders to demonstrate English language proficiency through prescreening processes for admission into the VIT Program or as determined by the employing district.

The State Board of Education (SBOE) took no action on the review of the amendments to §§230.21, 230.23, 230.36, 230.41, 230.53, 230.101, 230.111, and 230.113 at the November 16, 2018 SBOE meeting.

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21, §230.23

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (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, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), 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, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; TEC, §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator

who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; TEC, §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; TEC, §21.048(c-1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code (TGC), Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; TEC, §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; 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, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the TGC, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which specifies that each agency administering examinations for licensure must establish rules to implement and ensure reasonable accommodations for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the Texas Education Code, §§21.041(b)(1), (2), and (4), 21.044(a), 21.048, 21.050, and 22.082, and Texas Occupations Code, §54.003.

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

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

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §230.36, §230.41

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that 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, §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.031(b), which 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, §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; 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(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017, 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 under supervision; TEC, §22.0831(c),which provides that the SBEC shall review the national criminal history record information of all applicants for or holders of educator certification; and TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the Texas Education Code, §§21.003(a), 21.031, 21.041(b)(1)-(5) and (9), 21.051, as amended by Senate Bill 839, 85th Texas Legislature, Regular Session, 2017, and 22.0831(c) and (f).

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
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SUBCHAPTER E. EDUCATIONAL AIDE CERTIFICATE

19 TAC §230.53

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (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)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; and 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.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the Texas Education Code, §§21.041(a) and (b)(1)-(4).

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
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SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.101

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which authorizes the State Board for Educator Certification (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), 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, §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; 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(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; 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 Chapter 21, Subchapter B; TEC, §21.044(a), 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, §21.044(e), which requires the SBEC to specify that a person must have an associate degree or more advanced degree from an accredited institution of higher education; current licensure, certification, or registration as a health professions practitioner issued by a nationally recognized accrediting agency for health professionals; and at least two years of wage earning experience utilizing the licensure requirement when proposing rules under TEC, §21.044, for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which requires the SBEC to not propose rules for a certificate to teach a health science technology education course that specify that a person must have a bachelor's degree or that establish any other credential or teaching experience requirements that exceed the requirements under subsection (e); TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; TEC, §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; TEC, §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; TEC, §21.048(c-1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code (TGC), Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; TEC, §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; TEC, §21.0485, which provides that all candidates for a certificate to teach students with visual impairments must complete an approved educator preparation program; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under

TEC, Chapter 28, Subchapter A; 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, §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the TGC, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators; and Texas Occupation Code (TOC), §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the TOC, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the TOC, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering Chapter 53, Subchapter D.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the Texas Education Code, §§21.031(a), 21.041(b)(1)-(5) and (9) and (c), 21.044(a), (e), and (f), 21.048, 21.0485, 21.050, 21.054(a), 22.082, and 22.0831(f), and Texas Occupations Code, §53.105.

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

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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

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.040(6), which allows the State Board for Educator Certification (SBEC) authority to develop and implement policies that define responsibilities of the SBEC; 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 Chapter 21, Subchapter B; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; TEC, §21.048(b), which states that the SBEC may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments; TEC, §21.048(c), which states that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; TEC, §21.048(c-1), which states that the results of an examination administered under this section are confidential and are not subject to disclosure under the Texas Government Code, Chapter 552, unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by the TEC, §21.057, or the educator has failed the examination more than five times; TEC, §21.048(d), which states the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; 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, §21.052(a), which states that the SBEC may issue a certificate to an educator who 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 degree described by §21.052(a)(1)(A); holds an appropriate certificate or other credential issued by another state or country; and performs satisfactorily on the examination prescribed under the TEC, §21.048, or, if the educator holds a certificate or other credential issued by another state or country, an examination similar to and at least as rigorous as that described by §21.052(a)(1)(A) administered to the educator under the authority of that state; 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), as amended by HB 1934, 85th Texas Legislature, Regular Session, 2017, 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 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 §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the Texas Education Code, §§21.040(6), 21.041(b)(4) and (5) and (c), 21.048, 21.050, 21.052, as amended by House Bill 1934, 85th Texas Legislature, Regular Session, 2017, and 21.054(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.

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Cristina De La Fuente-Valadez
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CHAPTER 241. PRINCIPAL CERTIFICATE

The State Board for Educator Certification (SBEC) adopts the repeal of §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, and 241.30 and new §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35, 241.41, 241.45, 241.50, 241.55, 241.60, 241.65, and 241.70. The repealed and new sections are adopted without changes to the proposed text as published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5479) and will not be republished. The repeal of and new 19 Texas Administrative Code (TAC) Chapter 241 reorganizes the chapter to allow for the chapter title to reflect both the new principal certificate as well as the current principal certificate, establishes the requirements for the new principal certificate, and provides for a new endorsement for individuals who hold a certificate to serve in the role of principal.

REASONED JUSTIFICATION: The SBEC is statutorily authorized to regulate and oversee all aspects of the 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.

The SBEC rules in 19 TAC Chapter 241, Principal Certificate, establish all of the requirements for certification and educator preparation program (EPP) minimum standards for issuance of a principal certificate.

At the April 2016 SBEC meeting, the SBEC adopted new principal standards that better align with contemporary principal practices, principal appraisal, and professional development standards. With the adoption of new standards that reflect the knowledge and skills necessary for today's principal, there was careful consideration of the changes to the essential role of a principal to schools, students, communities, and teachers from 2002 (when the standards began to be used for assessment purposes) to the current role in 2018, as illustrated below.

Figure: 19 TAC Chapter 241 - Preamble

At the March 2018 SBEC meeting, Texas Education Agency (TEA) staff presented the SBEC with a comprehensive approach to a principal certification redesign that includes 1) a new certificate name that better reflects current reality along with a new principal certification assessment; 2) an optional tiered process for obtaining standard certification; and 3) an endorsement for currently certified principals and assistant principals.

The following is a description of the adopted repeal and adopted new rules to implement the principal certification redesign.

New Certificate Name: Principal as Instructional Leader

Given the changes in the principal's role from the prior years until now, the new principal certification is named Principal as Instructional Leader.

Principal Endorsement

Currently certified principals and assistant principals will be given the opportunity to strengthen their current certification through the completion of the performance assessment component of the new examination and attainment of the Principal as Instructional Leader Endorsement. The anticipated date for the performance assessment is fall 2019. As an added incentive, the time spent on successfully completing the performance assessment will qualify for continuing professional education hours.

The new 19 TAC Chapter 241 reorganizes the chapter into two subchapters to include the new Principal as Instructional Leader Certificate and Principal as Instructional Leader Endorsement in new Subchapter A, while maintaining the current Principal Certificate in new Subchapter B. The new rules are outlined as follows.

To ensure clarity and differentiate between the current Principal Certificate and the new Principal as Instructional Leader Certificate, the title of the chapter has changed from Chapter 241, Principal Certificate, to Chapter 241, Certification as Principal, to allow the new certificate to reside in the chapter without confusion between the two certificates.

New Subchapter A, Principal as Instructional Leader Certificate and Endorsement, was added to include all the requirements for the new certificate and new endorsement.

The new rules also follow the same process in place for the current Principal Certificate and allow for test development. The new rules clarify that the new Principal as Instructional Leader Certificate may be issued no earlier than December 1, 2018, and

the new Principal as Instructional Leader Endorsement may be issued no earlier than September 1, 2019.

In new §241.10(d), a candidate's scores on the piloted examination--used to develop the examination for the Principal as Instructional Leader Certificate--are exempted from the calculations used to determine an EPP's accountability rating. The exemption is intended as an incentive for EPPs to recommend candidates to take the piloted examination so that the agency can get the best data possible for the purposes of developing and improving the examination.

New Subchapter B, Principal Certificate, includes the rules for the current principal certificate.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 24, 2018, and ended September 24, 2018. The SBEC also provided an opportunity for registered oral and written comments at its October 5, 2018 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: Thirty-five individuals offered their general or more specific comments on this proposal. Six commenters supported modifying the new rules to generally speak to including the duties and roles of school counselors into principal preparation, including one commenter who asked for more funding for school counselors. Seventeen commenters requested amending rule text to add the Texas Model for Comprehensive School Counseling Programs to Chapter 241. Twelve commenters requested that the SBEC add the phrase, "comprehensive school counseling programs" to §241.15(c)(4) and (6), §241.15(f)(10), §241.55(c)(4) and (6) and §241.55(f)(10) for principal preparation as well as adding the phrase, "promotes implementation of the Texas Model for Comprehensive School Counseling Programs" in §241.15(g)(11), §241.55(b)(14), and §241.55(g)(11).

Of the 35 individuals who submitted public comments, 28 are Texas counselors, five have educator preparation program affiliations, one is the executive director of the Texas Counseling Association, and one is a school administrator.

At the October 5, 2018 meeting, the executive director of the Texas Counseling Association amended her initial written public comment to request that SBEC add the phrase, "comprehensive school counseling programs" to §241.15(c)(4) and §241.55(c)(4).

Response: The SBEC appreciates the comments but disagrees that the language should be modified. The purpose of standards is to provide a framework for what a candidate should know and be able to do by a certain point in time. In order for standards to stay current to best practices, standards should remain broad and flexible to adjust as the needs change. Citing a specific resource or model is best suited for the test framework and test development.

The role of a principal is to provide overall campus leadership for the six classes of certificates. Each certificate area has rules that speak directly to that area and in great depth. Section 241.15 currently contains several provisions that broadly address areas of student well-being. The provisions are as follows: "creates an atmosphere of safety that encourages the social, emotional, and physical well-being of staff and students" in §241.15(b)(12); "creates a campus culture that sets high expectations, promotes learning, and provides intellectual stimulation for self, students, and staff" in §241.15(c)(1); "ensures that effective instruction maximizes growth of individual students and student groups, supports equity, and eliminates the achievement gap" in §241.15(c)(9); "demonstrates awareness of social and economic issues that exist within the school and community that could impact campus operations and student learning" in §241.15(e)(6); "applies local, state, and federal laws and policies to support sound decisions while considering implications related to all school operations and programs" in §241.15(f)(7); "ensures that reports of educator misconduct, including inappropriate relationships between educators and students, are properly reported so appropriate investigations can be conducted" in §241.15(g)(3); "promotes awareness and appreciation of diversity throughout the campus community" in §241.15(g)(6); and "implements special campus programs to ensure that all students are provided quality, flexible instructional programs and services to meet individual needs" in §241.15(g)(7).

The language also aligns with current commissioner's rule in 19 TAC Chapter 149, Commissioner's Rules Concerning Educator Standards. While the SBEC appreciates these suggestions, such amendments to the rule text would not be appropriately inserted at the adoption stage of the rulemaking process.

The State Board of Education (SBOE) took no action on the review of the adopted repeal of §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, and 241.30 and new §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35, 241.41, 241.45, 241.50, 241.55, 241.60, 241.65, and 241.70 at the November 16, 2018 SBOE meeting.

19 TAC §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that 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, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the SBEC; 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)-(4), which require 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, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.046(d), which states that the SBEC shall consider competencies developed by relevant national organizations and the State Board of Education; and TEC, §21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, which require the SBEC to

propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements, including particular continuing education requirements for principals.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§21.003(a), 21.040(4), 21.041(b)(1)-(4), 21.046(b)-(d), and 21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017.

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
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SUBCHAPTER A. PRINCIPAL AS INSTRUCTIONAL LEADER CERTIFICATE AND ENDORSEMENT

19 TAC §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §21.003(a), which states that 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, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the SBEC; 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)-(4), which require 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, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.046(d), which states that the SBEC shall consider competencies developed by relevant national organizations and the State Board of Education; and TEC, §21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, which require the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements, including particular continuing education requirements for principals.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§21.003(a), 21.040(4), 21.041(b)(1)-(4), 21.046(b)-(d), and 21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017.

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

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SUBCHAPTER B. PRINCIPAL CERTIFICATE

19 TAC §§241.41, 241.45, 241.50, 241.55, 241.60, 241.65, 241.70

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §21.003(a), which states that 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, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the SBEC; 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)-(4), which require 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, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.046(d), which states that the SBEC shall consider competencies developed by relevant national organizations and the State Board of Education; and TEC, §21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regu-

lar Session, 2017, which require the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements, including particular continuing education requirements for principals.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§21.003(a), 21.040(4), 21.041(b)(1)-(4), 21.046(b)-(d), and 21.054(a), (e), and (e-2), as amended by Senate Bills 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017.

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 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.5, 153.18, 153.40, 153.41

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §§153.5, Fees; and 153.18, Appraiser Continuing Education (ACE); and new §§153.40, Approval of Continuing Education Providers and Courses; and 153.41, ACE Providers: Compliance and Enforcement, with changes to the text of §153.40 as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6578); therefore, §153.40 will be republished.

The amendments and new rules are recommended for adoption by the TALCB Education Committee to create processes for TALCB approval of appraiser continuing education (ACE) providers and courses and collect fees for these processes as authorized by the Legislature in Texas Occupations Code §§1103.153, 1103.156 and Chapter 1105, Texas Occupations Code. The amendments and rules allow TALCB to approve ACE providers and courses without relying on other states or the Appraiser Qualifications Board (AQB) to do so. The adopted amendments also clarify that ACE providers need not provide a copy of the Uniform Standards of Professional Appraisal Practice (USPAP) to students enrolled in a 7-hour USPAP Update course, but must ensure that students have access to an electronic or paper copy of the current version of USPAP.

Section 1103.051, Texas Occupations Code, established TALCB as an independent subdivision of the Texas Real Estate Commission (TREC). Chapter 1105, Texas Occupations Code, grants self-directed, semi-independent (SDSI) status to TALCB and TREC. As an SDSI agency, Chapter 1105 removes TALCB from the legislative appropriations process and requires TALCB to be responsible for all direct and indirect costs of TALCB's existence and operations. Thus, TALCB must generate sufficient revenue through the collection of fees to fund its budget and operations. The fees to be collected under the amendments and new rules will help TALCB to recover and fund only a portion of its operational costs to approve continuing education providers and courses.

Two comments were received on the amendments and new rules as published. One commenter supported the adoption of §§153.18, 153.40 and 153.41 as published. This commenter also suggested TALCB should offer $25 approval of one-time ACE course offerings for courses up to four hours in length, not just two hours in length as proposed. The commenter reasoned that a four-hour cutoff would be more fair and equitable to providers, since the approval fee for a three-hour course would be $65 and $70 for a four-hour course under the proposed amendments. After due consideration of these comments, the TALCB Education Committee found that ACE course approvals require additional time and work for staff review as the course length increases, and recommends adoption of a $25 fee only for approval of two-hour one-time course offerings, as proposed, since two hours is the minimum length authorized for ACE course approval under AQB requirements and federal law. TALCB agrees with the Education Committee's findings and the recommendation to adopt amendments to §§153.5, 153.18, and new §153.41 as published.

The second commenter suggested removing the requirement in §153.40(j) for course completion rosters to include the date a student registered for a course, because this date would be difficult for providers to track and implement and would not provide relevant information required under state or federal law. TALCB agrees with this comment to remove the requirement to include the date a student registered for a course on the course completion roster.

For these reasons, TALCB adopts amendments to 22 TAC §§153.5, 153.18, and new 153.41 as published, and TALCB adopts new 22 TAC §153.40 with changes to the text as published.

The reasoned justification for the amendments and rules is to provide processes for approving continuing education providers and courses consistent with AQB requirements and federal law at an equal or lower cost of obtaining the same or similar approvals from the AQB or another state, while allowing TALCB to raise sufficient revenue to recover and fund a portion of its operational costs as required under Chapter 1105, Texas Occupations Code.

The revisions to §153.40 as adopted do not change the nature or scope so much that the rule as adopted could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The amendments and new rules are adopted under Texas Occupations Code §1103.153, which authorizes TALCB to adopt rules relating to the requirements for approval of continuing education

providers and courses, and §1103.156, which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code.

The statute affected by these amendments and new rules is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

§153.40. Approval of Continuing Education Providers and Courses.

(a) This rule is effective September 1, 2019.

(b) Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person seeking accreditation or approval to be an appraiser continuing education (ACE) provider or instructor.

(2) ACE--Appraiser continuing education.

(3) ACE course--Any education course for which continuing education credit may be granted by the Board to a license holder.

(4) ACE provider--Any person approved by the Board; or specifically exempt by the Act, Chapter 1103, Texas Occupation Code, or Board rule; that offers a course for which continuing education credit may be granted by the Board to a license holder.

(5) Classroom course--A course in which the instructor and students interact face to face, in real time and in the same physical location.

(6) Distance education course--A course offered in accordance with AQB criteria in which the instructor and students are geographically separated.

(c) Approval of ACE Providers.

(1) A person seeking to offer ACE courses must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) pay the required fees under §153.5 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Standards for approval. To be approved by the Board to offer ACE courses, an applicant must satisfy the Board as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(4) Approval notice. An applicant shall not act as or represent itself to be an approved ACE provider until the applicant has received written notice of the approval from the Board.

(5) Period of initial approval. The initial approval of a CE provider is valid for two years.

(6) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(7) Subsequent approval.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for subsequent approval for another two year period.

(B) Approval or disapproval of a subsequent application shall be subject to the standards for initial applications for approval set out in this section.

(d) Application for approval of ACE courses. This subsection applies to appraiser education providers seeking to offer ACE courses.

(1) For each ACE course an applicant intends to offer, the applicant must:

(A) file an application on the appropriate form approved by the Board, with all required documentation; and

(B) pay the fees required by §153.5 of this title, including the:

(i) base fee; and

(ii) content review fee.

(2) An ACE provider may file a single application for an ACE course offered through multiple delivery methods.

(3) An ACE provider who seeks approval of a new delivery method for a currently approved ACE course must submit a new application and pay all required fees.

(4) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(5) Standards for ACE course approval.

(A) To be approved as an ACE course by the Board, the course must:

(i) cover subject matter appropriate for appraiser continuing education as defined by the AQB;

(ii) submit a statement describing the objective of the course and the acceptable AQB topics covered;

(iii) be current and accurate; and

(iv) be at least two hours long.

(B) The course must be presented in full hourly units.

(C) The course must be delivered by one of the following delivery methods:

(i) classroom delivery; or

(ii) distance education.

(D) The course design and delivery mechanism for all distance education courses must be approved by an AQB approved organization.

(6) Approval notice.

(A) An ACE provider cannot offer an ACE course until the provider has received written notice of the approval from the Board.

(B) An ACE course expires two years from the date of approval. ACE providers must reapply and meet all current requirements of this section to offer the course for another two years.

(e) Approval of currently approved ACE course for a secondary provider.

(1) If an ACE provider wants to offer an ACE course currently approved for another provider, the secondary provider must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) submit written authorization to the Board from the author or provider for whom the course was initially approved granting permission for the secondary provider to offer the course; and

(C) pay the fees required by §153.5 of this title, including:

(i) base fee; and

(ii) content review fee.

(2) If approved to offer the currently approved course, the secondary provider must:

(A) offer the course as originally approved;

(B) assume the original expiration date;

(C) include any approved revisions;

(D) use all materials required for the course; and

(E) meet the requirements of subsection (j) of this section.

(f) Approval of ACE courses currently approved by the AQB or another state appraiser regulatory agency.

(1) To obtain Board approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) If approved to offer the ACE course, the ACE provider must offer the course as approved by the AQB or other state appraiser regulatory agency, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB or other state appraiser regulatory agency.

(g) Approval of ACE courses for a 2-hour in-person one-time offering.

(1) To obtain Board approval of a 2-hour ACE course for an in-person one-time offering, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the one-time offering course approval fee required by §153.5 of this title.

(2) Any course approved under this subsection is limited to the scheduled presentation date stated on the written notice of course approval issued by the Board.

(h) Application for approval to offer a 7-Hour National USPAP Update course.

(1) To obtain approval to offer a 7-Hour National USPAP Update course, the provider must:

(A) be approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation;

(C) submit written documentation to the Board demonstrating that the course and instructor are currently approved by the AQB;

(D) pay the course approval fee required by §153.5 of this title;

(E) use the current version of the USPAP; and

(F) ensure each student has access to his or her own electronic or paper copy of the current version of USPAP.

(2) Approved ACE providers of the 7-Hour National USPAP Update course may include up to one additional classroom credit hour of supplemental Texas specific information. This may include topics such as the Act, Board rules, processes and procedures, enforcement issues or other topics deemed appropriate by the Board.

(i) Application for ACE course approval for a presentation by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE course approval for a presentation by a Board member or staff, the provider must:

(1) file an application on the appropriate form approved by the Board, with all required documentation; and

(2) pay the fees required by §153.5 of this title.

(j) Responsibilities and Operations of ACE providers.

(1) ACE course examinations:

(A) are required for ACE distance education courses; and

(B) must comply with AQB requirements.

(2) Course evaluations. A provider shall provide each student enrolled in an ACE course a course evaluation form approved by the Board and a link to an online version of the evaluation form that a student may complete and submit to the provider after course completion.

(3) Course completion rosters.

(A) Classroom courses. Upon successful completion of an ACE classroom course, a provider shall submit to the Board a course completion roster in a format approved by the Board no later than the 10th day after the date a course is completed. The roster shall include:

(i) the provider's name and license number;

(ii) the instructor's name;

(iii) the course title;

(iv) the course approval number;

(v) the number of credit hours;

(vi) the date of issuance;

(vii) the date the student started and completed the course; and

(viii) the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Board.

(B) Distance education courses. A provider shall maintain a Distance Education Reporting Form and submit information contained in that form by electronic means acceptable to the Board for each student completing the course not earlier than the number of hours for course credit after a student starts the course and not later than the 10th day after the student completes the course.

(C) The Board will not accept unsigned course completion rosters.

(4) An ACE provider may withhold any official course completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(5) Security and Maintenance of Records.

(A) An ACE provider shall maintain:

(i) adequate security against forgery for official completion documentation required by this subsection;

(ii) records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements; and

(iii) any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(C) Upon request, an ACE provider shall produce instructor and course evaluation forms for inspection by Board staff.

(6) Changes in Ownership or Operation of an approved ACE provider.

(A) An approved ACE provider shall obtain approval of the Board at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(i) ownership;

(ii) management; and

(iii) the location of main office and any other locations where courses are offered.

(B) An approved provider requesting approval of a change in ownership shall provide a Principal Application Form for each proposed new owner who would hold at least a 10% interest in the provider to the Board.

(k) Non-compliance.

(1) If the Board determines that an ACE course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the ACE course or provider.

(2) Proceedings to suspend or revoke approval of an ACE course or provider shall be conducted in accordance with §153.41 of this title.

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 November 26, 2018.

TRD-201805010
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 16, 2018
Proposal publication date: October 5, 2018
For further information, please call: (512) 936-3652

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.10

The Texas State Board of Examiners of Psychologists adopts amendments to 22 TAC §461.10, concerning License Required, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5911). The adopted amended rule text will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary because the Canadian Psychological Association does not accredit or approve post-doctoral programs, and the Board believes the public would be better served by defining what criteria must be met before a post-doctoral program will be considered substantially equivalent to an APA accredited or APPIC member program.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805063

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §461.11, Professional Development, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5912) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to reflect the fact that documentation of the required professional development hours need not be submitted if a licensee does not wish to renew his or her license.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805064
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.27

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §463.27, Temporary License for Persons Licensed in Other States, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5914). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to ensure that only actively licensed individuals in other jurisdictions may apply for temporary licensure. As currently written, the rule would allow an individual with an inactive license, but who otherwise meets the requirements of the rule, to receive a temporary license. The Board believes this represents an unreasonable risk of harm to the public because inactive license requirements vary and do not necessarily require a licensee to maintain his or her competence through professional development. Generally speaking, it is only once a licensee elects to return his or her license to active status that steps must then be taken to ensure the individual is current on professional development and thus competent to practice. Without this adopted amendment, an applicant from another jurisdiction with an inactive license, who would be precluded from practicing in his or her home state, can deliver services via a temporary license in Texas without the competency assurances afforded by professional development.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805065
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.28

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.28, Emergency Limited Temporary License with changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5916) and will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to ensure agency staff and the public have a clear understanding of the criteria that must be met before an emergency limited temporary license to practice psychology may be issued.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.28. Emergency Limited Temporary License.

(a) The Board may issue an emergency limited temporary license to practice psychology if:

(1) the Governor declares a disaster under §418.014 of the Government Code and issues a proclamation in accordance with §418.016 suspending regulatory statutes and rules which would prevent, hinder, or delay necessary action in coping with the declared disaster;

(2) the Executive Director determines that enacting these emergency licensing provisions are necessary in that disaster area; and

(3) the applicant meets the requirements set forth herein below.

(b) An emergency limited temporary license issued pursuant to this rule will expire thirty (30) days after issuance or upon termination of the state of disaster, whichever occurs first.

(c) An emergency limited temporary license issued pursuant to this rule is valid only for the practice of psychology within the disaster area designated by the governor.

(d) To be eligible for an emergency limited temporary license to practice psychology, an applicant must:

(1) submit an application on a board-approved form;

(2) submit written verification that the applicant is actively licensed, certified, or registered as a psychologist, psychological associate, or specialist in school psychology and in good standing in another jurisdiction.

(e) For purposes of subsection (d) of this section, the term "good standing" means there is not current disciplinary action on your out-of-state psychology license(s).

(f) An emergency limited temporary license may be renewed for an additional thirty (30) day period if the disaster declaration has not expired or been terminated. To renew a license, an individual must submit a renewal application on a board-approved form on or before the license expiration date.

(g) An individual practicing under an emergency limited temporary license must:

(1) display a copy of his or her emergency limited temporary license in a conspicuous location when delivering psychological services, or provide written notification of the license number and instructions on how to verify the status of a license when obtaining informed consent;

(2) provide notification to the public in a manner consistent with Board rule §469.2 of this title (relating to Public Complaint Notification Statement), that complaints can be filed with the Board; and

(3) comply with all other applicable board rules.

(h) There will be no fee associated with the application, issuance, or renewal of an emergency limited temporary license.

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 November 28, 2018.

TRD-201805066

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: December 18, 2018

Proposal publication date: September 14, 2018

For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §465.1, Definitions, without changes to the proposed text as published in the August 3, 2018, issue of the *Texas Register* (43 TexReg 5035) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to ensure greater clarity with regard to a patient's access to his other file, while simultaneously recognizing that not all output generated from an assessment or evaluation constitutes part of the patient record.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805067

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: December 18, 2018

Proposal publication date: August 3, 2018

For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.4

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §469.4, Complaint Investigation, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5918). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to clarify and properly categorize the rules governing complaint investigations un-

der the appropriate rule heading. The Board believes this reorganization to be a more logical and intuitive placement of the operative language.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805068
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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22 TAC §469.5

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §469.5, Complaint Disposition, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5919) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to clarify and properly categorize the rules governing complaint disposition under the appropriate rule heading. The Board believes this reorganization to be a more logical and intuitive placement of the operative language. The adopted amendment will also help ensure that the agency disposes of complaints lacking in merit, or for which the agency lacks jurisdiction in a timely manner, while simultaneously ensuring that each complaint is not dismissed without appropriate consideration. Lastly, the adopted amendment will help ensure the timely disposition of complaints resulting in a resignation in lieu of adjudication by a licensee by authorizing the Executive Director to accept such resignations.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805069
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.22

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §470.22, Schedule of Sanctions, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5921). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment is adopted to correct a typographical error.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 28, 2018.

TRD-201805070
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 18, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.11, 703.13, 703.14, 703.21, 703.24

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to §§703.11, 703.13, 703.14, 703.21, and 703.24 without changes to the proposed amendments as published in the September 28, 2018, issue of the *Texas Register* (43 TexReg 6431), therefore, the rules will not be republished. The amendments allow a grantee an extra business day to submit required reports that may be due on a weekend or federal holiday.

Reasoned Justification

The adopted amendments to §§703.11, 703.13, 703.14, 703.21, and 703.24 allow required grant filings to be submitted the next business day following a due date that falls on a weekend or federal holiday as designated by the U.S. Office of Personnel Management. For example, if the due date of a Financial Status Report (FSR) falls on a Saturday, the grant recipient may submit the FSR on the first business day following the due date without the Institute considering the report delinquent. Moving the due date to a business day is consistent with the practice of most state and federal agencies. Implementing this change assists CPRIT's grant recipients and may reduce the occurrence of delinquent reports.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §§703.11, 703.13, 703.14, 703.21, and 703.24.

The rule change is adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 November 28, 2018.

TRD-201805059
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: December 18, 2018
Proposal publication date: September 28, 2018
For further information, please call: (512) 305-8487

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

SUBCHAPTER B. PERSONNEL AND TRAINING

The Texas Health and Human Services Commission (HHSC) adopts repealed §743.105 and new §743.105 in Title 26, Chapter 743, Minimum Standards for Shelter Care, concerning background check requirements. The repeal and new section are adopted without changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6195). The rule text will not be republished.

BACKGROUND AND JUSTIFICATION

The Child Care and Development Block Grant (CCDBG) of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq. and supported in the federal rules in 45 CFR Part 98. For the purposes of this preamble, the "Act" will include the requirements in the statute and the federal regulations.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act made significant reforms to the CCDF program to raise the health, safety, and quality of child care by mandating states to comply with a multitude of additional requirements in order to continue to receive the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, the Child Care Licensing (CCL) department of the HHSC Regulatory Services Division is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance.

One of the provisions of the Act that has a significant impact on CCL and this chapter is related to background checks. One of the Act's requirements related to mandated fingerprint-based criminal history checks for home-based day care providers was implemented in 2016 in a phased-in approach. However, many of the Act's other background check requirements needed significant technological changes. The technological changes are nearing completion and the Act's other background check requirements are being implemented at this time.

The repeal and new rule clarify that shelter care operations must comply with Chapter 745, Subchapter F, Background Checks, which are now consistent with the Act.

COMMENTS

The 30-day comment period ended October 22, 2018.

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

ADDITIONAL INFORMATION

For further information, please call: (512) 438-5559.

26 TAC §743.105

STATUTORY AUTHORITY

The repeal is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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 November 29, 2018.

TRD-201805086

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 13, 2019
Proposal publication date: September 21, 2018
For further information, please call: (512) 438-5559

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26 TAC §743.105

STATUTORY AUTHORITY

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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 November 29, 2018.

TRD-201805087
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 13, 2019
Proposal publication date: September 21, 2018
For further information, please call: (512) 438-5559

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.7

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts, with change, an amendment to §132.7, Duration of Death Benefits for Eligible Spouse. The proposed amendment was published in the *Texas Register* on October 12, 2018, (43 TexReg 6805) and will be republished. The only change made to the proposed language was a minor change in subsection (f) to provide clarity in the rule.

This amendment aligns the rule with Labor Code §408.183, as amended by House Bill (HB) 2119, 85th Legislature, Regular Session (2017), effective September 1, 2017. HB 2119 amended §408.183 to allow eligible spouses of first responders to remain eligible for death benefits for life after remarrying, regardless of the date on which the death of the first responder occurred, if the first responder died as a result of an injury in the course and scope of employment or while providing services as a volunteer. The change to §408.183 applies only to eligible spouses who remarried on or after September 1, 2017.

Two comments were received, and both were in support of the amendment. No public hearing was requested.

Amended §132.7(f) deletes the words, "This subsection only applies to claims based on a compensable injury that occurs on or after September 1, 2015," and adds the following words and the following new language: "This subsection applies to: (1) eligible spouses who remarry on or after September 1, 2017; and (2) eligible spouses who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015."

The amendment does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children.

RESPONSE TO COMMENTS

Comments were received from the Insurance Council of Texas and the Office of Injured Employee Counsel (OIEC). Both were in support of the rule, and the amendment is adopted without changes. OIEC recommended that DWC provide guidance on applying the two different tests in the rule to more fully explain possible scenarios for the surviving spouses of first responders. DWC appreciates the suggestion and has provided additional information on DWC's first responder frequently asked questions web page available at www.tdi.texas.gov/wc/employee/firstresp.html.

The amendment is adopted under Texas Labor Code §§402.00111, 402.061, and 408.183. The adopted amendment supports the implementation of the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Section 402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Workers' Compensation Act. Section 408.183 outlines the duration of death benefits for legal beneficiaries.

Other provisions of the Labor Code relating to Rule 132.7 include §§401.011(13) and (29), 415.002(a), 408.181, 408.182, and 408.184. Section 401.011(13) defines death benefits. Section 401.011(29) defines legal beneficiary. Section 415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner, and (a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. Section 408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Section 408.182 outlines the requirements for distribution of death benefits. Section 408.184 outlines the requirements for redistribution of death benefits.

§132.7. Duration of Death Benefits for Eligible Spouse.

(a) Except as provided in subsection (f) of this section, a spouse who is determined eligible for death benefits is entitled to receive benefits until the date of the spouse's death or until remarriage. The insurance carrier shall notify the eligible spouse of the requirements of this section within 60 days of initiating benefits to that spouse.

(b) An eligible spouse who enters into a ceremonial or informal marriage is entitled to receive a lump-sum payment of 104 weeks of death benefits.

(c) An eligible spouse shall notify the division and the insurance carrier in writing within 30 days of the date of remarriage. The notice shall include the name and social security number of the deceased employee, the date of death, the workers' compensation claim file number, and the date of remarriage.

(d) The amount of the lump-sum payment shall be calculated by multiplying the amount paid to the spouse the week prior to the remarriage by 104. If the insurance carrier paid any weekly benefits to the eligible spouse after the remarriage, the total amount of such payments shall be deducted from the amount of the commuted payment.

(e) An eligible spouse who knowingly accepts death benefits after remarriage in excess of the amount allowed by this section, and who does not notify the division or the insurance carrier of remarriage, may be subject to administrative penalties.

(f) An eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, who died as a result of an injury in the course and scope of employment or while providing services as a volunteer. Subsections (b) - (e) of this section do not apply to an eligible spouse under this subsection. This subsection applies to:

(1) eligible spouses who remarry on or after September 1, 2017; and

(2) eligible spouses who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015.

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 November 30, 2018.

TRD-201805122
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 20, 2018
Proposal publication date: October 12, 2018
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §§1.1, 1.2, 1.4 - 1.11, 1.14 - 1.16, 1.18, 1.20, 1.22, 1.27 - 1.29, 1.31 - 1.33, 1.35 - 1.37, 1.39 - 1.42

The Comptroller of Public Accounts adopts the repeal of §1.1, concerning intent, scope, and construction of rules; §1.2, concerning settlement in a contested case based on insolvency; §1.4, concerning representation and participation; §1.5, concerning initiation of a hearing; §1.6, concerning extensions of time for initiating hearing process; §1.7, concerning content of statement of grounds; preliminary conference; §1.8, concerning resolution agreements; §1.9, concerning position letter; §1.10, concerning acceptance or rejection of position letter; §1.11, concerning modification of the position letter; §1.14, concerning notice of setting for certain cigarette, cigar, and tobacco tax cases; §1.15, concerning reply to the position letter; §1.16, concerning response of the administrative hearings section; §1.18, concerning filing documents; §1.20, concerning continuances; §1.22, concerning oral and written submission hearings; §1.27, concerning proposal for decision; §1.28, concerning comptroller's decisions and orders; §1.29, concerning motion for rehearing; §1.31, concerning computation of time; §1.32, concerning service of documents on parties; §1.33, concerning discovery; §1.35, concerning nonbinding nature of agreed facts; §1.36, concerning interested parties; §1.37, concerning joint hearings; severance; §1.39, concerning dismissal of case; §1.40, concerning burden of proof; §1.41, concerning ex parte communications; and §1.42, concerning definitions, as part of the proposed repeal and replacement of this Division, known as the comptroller's rules of Practice and Procedure, without changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7077). A new set of comprehensively updated and renumbered sections in this Division is proposed elsewhere in this issue of the *Texas Register.*

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, and Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

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 December 3, 2018.

TRD-201805131
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: January 1, 2019
Proposal publication date: October 26, 2018
For further information, please call: (512) 475-0387

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34 TAC §§1.1 - 1.8, 1.10 - 1.14, 1.20 - 1.26, 1.30 - 1.35

The Comptroller of Public Accounts adopts new §§1.1, concerning scope and construction of rules; 1.2, concerning definitions; 1.3, concerning representation and participation; 1.4, concerning computation of time; 1.5, concerning filing documents with SOAH or the Office of Special Counsel for Tax Hearings; 1.6, concerning service of documents on parties; 1.7, concerning

ex parte communications; 1.8, concerning deadline extensions; 1.10, concerning requesting a hearing; 1.11, concerning statement of grounds; preliminary conference; 1.12, concerning position letter; 1.13, concerning taxpayer's acceptance or rejection of position letter, and reply to position letter; 1.14, concerning the administrative hearings section's response to the reply to the position letter; 1.20, concerning docketing oral and written submission hearings; 1.21, concerning notice of setting and permit holder reply for certain cigarette, cigar, and tobacco tax cases; 1.22, concerning discovery; 1.23, concerning consolidated and joint hearings; severance; 1.24, concerning interested parties; 1.25, concerning nonbinding nature of agreed facts; 1.26, concerning burden and standard of proof in contested cases; 1.30, concerning settlement in a contested case based on insolvency; 1.31, concerning resolution agreements; 1.32, concerning dismissal of case; 1.33, concerning proposal for decision and exceptions; and 1.35, concerning motion for rehearing, without changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7078). The Comptroller of Public Accounts adopts new 1.34, concerning comptroller's decisions and orders, with changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7078).

BACKGROUND AND PURPOSE

The Comptroller of Public Accounts is adopting the repeal and replacement of all sections in Subchapter A, Division 1, Practice and Procedure, with the repeal of this Division adopted elsewhere in this issue of the *Texas Register.*

The purpose of the new sections is to provide a comprehensive update to the procedural rules governing those contested tax cases which are of the type that will fall under the jurisdiction of the State Office of Administrative Hearings (SOAH) unless resolved prior to SOAH referral. The most recent comprehensive update of the rules of Practice and Procedure occurred in 2007, in response to Acts 2007, 80th Legislature, 2007, Ch. 354 (S.B. 242), effective June 15, 2007, a package of statutory changes that conferred SOAH jurisdiction over certain contested cases involving the comptroller's collection and administration of taxes and fees. *See, e.g.,* Tax Code, §111.00455 (Contested Cases Conducted by Tax Division of State Office of Administrative Hearings) and Government Code, §2003.101 (Tax Hearings).

The 2007 comprehensive revision of the procedural rules was undertaken in anticipation of conducting cases under SOAH jurisdiction, but before comptroller staff acquired actual experience with SOAH hearings. While there have been some amendments to the rules of Practice and Procedure since 2007, there has not been a comprehensive revision to reflect the experience and lessons learned in the eleven years that SOAH has been conducting tax hearings. The new sections, and the renumbering of sections within this division, would complete a process begun when nine sections in this Division were amended effective July 13, 2017, as the first step of this proposed comprehensive revision (See 42 TexReg 3490). The new sections provide current and more complete guidance to taxpayers and practitioners participating in the contested case process, from the initial request for a hearing to the final disposition of a contested case. In addition, the new sections in this Division provide a more rational numbering system for the rules of Practice and Procedure, replacing the somewhat haphazard and random numbering scheme of the current sections with a more organized and chronological numbering system.

Many of the new sections include a substantial amount of the text of an existing section, or more than one existing section, concerning the same subject matter as the proposed new section. These sections are being adopted as new sections, instead of amendments to the existing sections, to allow all new sections to be renumbered in a more rational and chronological order. To allow comparison of the new sections to the existing sections from which they have been derived in whole or in part, the following section by section summary references the existing section or sections that concern the same subject matter.

New §1.1, concerning Scope and Construction of Rules. This new section concerns the same subject matter as current §1.1 (Intent, Scope, and Construction of Rules), but carries over none of the text. Subsection (a) describes the matters subject to the sections in this Division, which are the contested cases for which a hearing may be conducted by the State Office of Administrative Hearings (SOAH) as provided by Tax Code, §111.00455 and Government Code, §2003.101, relating to the collection, receipt, administration, and enforcement of a tax imposed under Tax Code, Title 2 and any other tax, fee, or other amount that the comptroller is required to collect, receive, administer, or enforce under a law not included under Tax Code, Title 2. Disputed agency actions subject to these rules include deficiency determinations under Tax Code, §111.008, which may be contested by a petition for redetermination under Tax Code, §111.009; jeopardy determinations, which may be contested by a petition for redetermination under Tax Code, §111.022; and the denial of refund claims made under Tax Code, §111.104, which may be contested by requesting a refund hearing under Tax Code, §111.105. Subsection (b) describes certain matters not subject to this subchapter, as they are not contested cases referred to SOAH pursuant to Tax Code, §111.00455(b), and Government Code, §2003.101. Subsection (c) explains that SOAH's Rules of Procedure, 1 TAC Chapter 155, govern contested cases while SOAH has jurisdiction, which is the time between the docketing of the case at SOAH and the referral or remand of the case back to the agency. Subsection (d) states that the principles of statutory construction and the Code Construction Act, Government Code, Chapter 311, apply to this subchapter.

New §1.2, concerning Definitions. This new section carries over some text in current §1.42 (Definitions), and also deletes obsolete definitions, adds new definitions, amends other definitions, and renumbers the subsections containing all definitions. The new section does not include obsolete definitions relating to licensing or permitting matters found in current §1.42(4) (Applicant); (9) (Licensing); (11) (Permit); (12) (Permit holder); and (17) (Respondent or taxpayer). The new section also excludes the text of current §1.42(21) (Tax Division), as that term is no longer used by the agency, and current §1.42(20) (SOAH Rules of Procedure), as that term is clear in context in the sections it is used. New §1.2 includes definitions for the following terms not in current §1.42: AHS (the acronym for the Administrative Hearings Section), claimant, and Office of Special Counsel for Tax Hearings. Other definitions are edited for readability, and all subsections are renumbered to allow the new and amended definitions to be listed alphabetically.

New §1.3, concerning Representation and Participation. This new section largely carries over the text of current §1.4 (Representation and Participation), with changes to update the references to other sections in this Division proposed for renumbering, to improve clarity, and to update obsolete terms.

New §1.4, concerning Computation of Time. This new section carries over the text of current §1.31 (Computation of Time) without change.

New §1.5, concerning Filing of Documents with SOAH or the Office of Special Counsel for Tax Hearings. This new section carries over most of the text of current §1.18 (Filing Documents), with minor changes. The title is changed to "Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings," to be more specific. The text of subsection (b) of current §1.18 is rewritten to be clearer and to add paragraph (4), referring to additional documents required to be filed with the comptroller through the Office of Special Counsel for Tax Hearings. References are added to specifically refer to the Office of Special Counsel for Tax Hearings, and references to other sections in this Division are updated to reflect the proposed renumbering scheme.

New §1.6, concerning Service on Documents on Parties. This new section carries over the text of current §1.32 (Service of Documents on Parties), with changes to update the references to other sections in this Division proposed for renumbering, and to update the obsolete term "Assistant General Counsel" to "Tax Hearings Attorney." Subsection (d)(2) is revised to provide that the service date of a document delivered by mail is determined by the date-stamp affixed by the comptroller's mail room.

New §1.7, concerning Ex Parte Communications. This new section carries over the text of current §1.41 (Ex Parte Communications) without change.

New §1.8, concerning Deadline Extensions. This new section concerns the same general subject matter as current §1.20 (Continuances) but carries over none of the text. Subsection (a) provides that, before SOAH acquires jurisdiction over a contested case, a taxpayer may request to extend a deadline imposed by the comptroller's rules of practice and procedure, and explains how the request should be made and the good cause standard on which it will be granted. Subsection (b) explains that after SOAH acquires jurisdiction over a contested case, motions to extend filing deadlines and motions for continuance must be filed with SOAH, and entitles a taxpayer to a 30-day continuance of the hearing to permit the taxpayer to obtain and present additional evidence if an additional claim is asserted at or before a hearing. Tax Code, §151.511(c) provides that, for redetermination hearings concerning the limited sales, excise, and use tax, if an additional claim is asserted by the comptroller, the petitioner is entitled to a 30-day continuance of the hearing. Subsection (b) extends this statutory 30-day continuance provision to apply to all tax types. Subsection (c) refers to new §1.35(d) of this subchapter, relating to requests for additional time to file a motion for rehearing or reply on a decision or order by the comptroller.

New §1.10, concerning Requesting a Hearing. This new section concerns and combines the subject matters of current §1.5 (Initiation of a Hearing) and §1.6 (Extensions of Time for Initiating Hearing Process) and carries over some text from each, with substantial additions. New subsection (a)(1) provides that if a taxpayer disagrees with a taxability determination, the taxpayer may timely request a redetermination hearing in writing, which must include a Statement of Grounds. New subsection (a)(2) provides that a request for redetermination must be submitted before the expiration of 60 days after the date the notice of determination is issued, or before the expiration of 20 days after the statement date on the notification of a jeopardy determination. The 60-day deadline is proposed to implement SB 1095 (85R), which amended Tax Code, §111.009 (Redetermination), effective September 1, 2017, and changed this deadline from 30 days to 60 days. The 20-day deadline for jeopardy determinations is imposed by Tax Code, §111.022 (Jeopardy Determination). New subsection (a)(3) provides the mailing address, email address, and fax number of the agency's Audit Processing Section, to which requests for redetermination must be timely submitted. New subsection (a)(4) provides that, following a request for redetermination, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. This subsection further provides that the request for additional evidence may specify that, pursuant to Tax Code, §151.054, resale or exemption certificates to support tax-free sales must be submitted within 60 days from the date of the request, or they will not be accepted as evidence to support a claim of tax-free sales at the agency or before SOAH. New subsection (b)(1) provides that if a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may timely request a refund hearing in writing, which must include a Statement of Grounds. New subsection (b)(2) provides that a request for a refund hearing must be submitted before the expiration of 60 days after the date the comptroller issues a letter denying the claim for refund, to conform to SB 1095. New subsection (b)(3) provides the mailing address, email address, and fax number of the agency's Audit Processing Section, to which requests for refund hearings must be timely submitted. New subsection (b)(4) provides that a refund hearing will not be granted if neither the original request for a refund, nor the Statement of Grounds accompanying a request for a refund, state grounds on which a refund may be granted. New subsection (b)(5) states that if a refund claim is denied and the taxpayer does not timely request a hearing, a taxpayer's right to maintain a refund suit might be affected, citing Tax Code, §111.104 and §112.151. New subsection (c) is intended to explain when a hearings request is timely submitted when submitted by mail, by hand-delivery, or by electronic transmission. New subsection (d) carries over, with changes, text of current §1.6, relating to extensions of time for initiating the hearing process, and provides that requests to extend the due date for requesting a hearing may be granted in case of emergency or extraordinary circumstances, but they will not be routinely granted and requests after the expiration of the original due date will not be considered. This subsection explains that the agency will not be responsible for delay in delivery of mail, messenger service, or other carriers. This subsection provides that requests will be granted or denied by the Chief Counsel for the Hearings and Tax Litigation Division, and provides the mailing address, email address, and fax number to submit such requests.

New §1.11, concerning Statement of Grounds; Preliminary Conference. This new section carries over some text of current §1.7 (Content of Statement of Grounds; Preliminary Conference), with significant additions. New subsection (a) explains the required content of the Statement of Grounds, providing that it must contain the reasons the taxpayer disagrees, in whole or in part, with the agency's determination or refund denial, and that it must list and number the contested items or transactions individually or state general contentions that sufficiently identify a category or categories of contested items or transactions. This subsection further provides that for each contested item or general contention, the taxpayer must also state the factual basis and the legal grounds to support a claim that the tax should not be assessed or that the tax should be refunded, and that if the taxpayer disagrees with the agency's interpretation of the law, specific legal authority must be cited in support of the taxpayer's arguments. New subsection (b) adds a requirement

that the Statement of Grounds be signed by the taxpayer or designated representative to be considered complete, and that the individual signing the Statement of Grounds will be the taxpayer's designated representative for notice pursuant to §1.3 of this title. New subsection (c) states that if the Statement of Grounds is defective or the power of attorney authorizing the Statement of Grounds is defective, because, for example, it contains no contested items or contentions or is not signed, the agency will notify the taxpayer of the actions required to correct the defect. If the taxpayer does not correct the defect by the deadline specified by the agency, the hearing may not be granted. New subsection (d) provides that contested items or contentions that are not listed in the Statement of Grounds may be barred from consideration by the administrative law judge (ALJ) in SOAH proceedings. New subsection (e) provides that if the Statement of Grounds fails to state the contested items or contentions, or fails to state the factual basis and legal grounds upon which relief is sought, the hearing may be dismissed for failure to state a contested case issue for which relief can be granted pursuant to §1.32 of this title (Dismissal of Case). New subsection (f) explains the process by which the agency may request a preliminary conference, or may request the taxpayer provide additional information, in an attempt to reach an early resolution of the matter prior to the referral of the contested case to the AHS. A written request for additional information may include a request pursuant to Tax Code, §151.054, requiring that any resale or exemption certificates to support tax-free sales must be submitted within 60 days from the date of the request, and that any such certificates not timely submitted will not be accepted as evidence to support a claim of tax-free sales by the agency or in proceedings at SOAH. New subsection (g) provides that the Statement of Grounds may be amended up to the time that a Reply to the Position Letter is due, and explains that the Statement of Grounds does not toll the limitations period for any additional contested items, transactions, or general contentions related to refund claims.

New §1.12, concerning Position Letter. This new section concerns and combines the subject matters of current §1.9 (Position Letter) and §1.11 (Modification of the Position Letter) and carries over some text from each, with substantial additions. New subsection (a) provides that the tax hearings attorney will review the Statement of Grounds and documentary evidence, and issue a Position Letter accepting or rejecting the taxpayer's contentions and stating the AHS's position on all disputed issues raised by the taxpayer. New subsection (b) provides that an acceptance or rejection selection form will be included with the Position Letter as an attachment, as more fully described by new §1.13 of this title (Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter). New subsection (c) is amended to describe the use and effect of a notice of demand issued with the Position Letter pursuant to Tax Code, §111.105(e). The tax hearings attorney may issue with the Position Letter a written notice of demand that all documentary evidence to support facts or contentions related to a taxpayer's claim for refund be produced before the expiration of a specified date in the notice, which may not be less than 180 days from the date of the original refund claim, and not less than 60 days from the date of the notice. Failure to produce the requested documents within the specified time period will prevent the use of those documents as evidence at SOAH. New subsection (c) further explains that Tax Code, §111.105(e) is only applicable to the administrative hearing and has no effect on a judicial proceeding pending under Tax Code, Chapter 112, and states that the agency may issue a notice of demand pursuant to Tax Code, §111.105(e) at other stages of the contested case process before or after the issuance of a Position Letter. New subsection (d) is added to describe a procedure by which a taxpayer may request the issuance of a Position Letter if one has not been issued within 60 days after the contested case is assigned to a tax hearings attorney. If the Position Letter is not issued within 60 days after initial assignment of the case, the taxpayer may submit a written request to the tax hearings attorney to issue a Position Letter within 45 days of receipt of the request. The request would require the tax hearings attorney to either issue the Position Letter by the deadline, or request an extension of the deadline. If the taxpayer declines to extend the deadline, the tax hearings attorney will confer with the taxpayer and docket the case at SOAH consistent with §1.20 of this title (Docketing Oral and Written Submission Hearings). New subsection (e) provides that if the Position Letter is modified or amended, the taxpayer must accept or reject it within 45 days after the modified or amended Position Letter is dated, unless an extension is granted, and that any pending deadline to respond to a Notice of Demand will correspond to the deadline to accept or reject the modified or amended Position Letter.

New §1.13, concerning Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter. This new section concerns and combines the subject matters of current §1.10 (Acceptance or Rejection of Position Letter) and §1.15 (Reply to Position Letter) and carries over some text from each, with substantial additions. New subsection (a) provides that the taxpayer must accept or reject the Position Letter, in whole or in part, within 45 days after the day the Position Letter is dated. The taxpayer may request an extension of this deadline from the assigned tax hearings attorney, and the first request of up to an additional 45 days will be freely granted while additional extensions will require the taxpayer to show good cause. New subsection (b) describes the process by which the taxpayer accepts or rejects the Position Letter by means of the selection form attached to the Position Letter, which must be signed and returned to the assigned tax hearings attorney. Indicating agreement with the Position Letter will be considered a resolution agreement under §1.31 of this title (Resolution Agreements), and a final billing calculated in accordance with the Position Letter will be sent to the taxpayer, while rejecting the Position Letter in whole or part will allow the contested case to proceed. New subsection (c) provides that at the time the taxpayer returns the selection form indicating disagreement with the Position Letter, the taxpayer may also provide a Reply to the Position Letter. The Reply should address all unresolved contentions and provide legal and factual support for the taxpayer's position, and indicate any contentions or contested items the taxpayer believes were not addressed by the Position Letter in order for those contentions or contested items to be included in the Notice of Hearing. This subsection also provides that no Reply to the Position Letter is necessary if the taxpayer has previously provided all facts, legal arguments, information, and documents for consideration. New subsection (d) provides that if the taxpayer fails to timely respond to the Position Letter, the comptroller may dismiss the contested case pursuant to §1.32 of this title (Dismissal of Case). In such cases, an amended determination or final billing will be prepared in accordance with the Position Letter and sent to the taxpayer, which will conclude the contested case unless the taxpayer files a motion for rehearing following the procedures stated in §1.35 (Motion for Rehearing).

New §1.14, concerning The Administrative Hearings Section's Response to the Reply to the Position Letter. This new section carries over some text from current §1.16 (Response of the Ad-

ministrative Hearings Section), with additions and modifications. New subsection (a) provides that if the taxpayer provides additional facts, information, documents, or legal arguments in a Reply to the Position Letter, the tax hearings attorney may issue, within 90 days, a Response stating the legal position of the AHS and any factual disagreement, on each issue or argument raised by the taxpayer. The tax hearings attorney may request an extension of the 90-day deadline, but if the taxpayer does not agree to extend the deadline, the tax hearings attorney will docket the case at SOAH, pursuant to §1.20 of this title (Docketing Oral and Written Submission Hearings). New subsection (b) addresses cases in which no Response to the Reply to the Position Letter is needed, which will usually be the case when the Reply to the Position Letter does not contain any additional facts or legal arguments that were not previously addressed in the taxpayer's Statement of Grounds. In such cases, the tax hearings attorney will proceed to docket the case at SOAH consistent with §1.20 of this title (Docketing Oral and Written Submission Hearings).

New §1.20, concerning Docketing Oral and Written Submission Hearings. This new section concerns the same general subject matter as current §1.22 (Oral and Written Submission Hearings) but carries over none of the text. New subsection (a) provides that a hearing before the ALJ will be conducted either orally, if selected by any party, or by written submission. If an oral hearing is selected by any party, the parties must agree to three potential hearing dates, from which SOAH will select a date according to SOAH's availability. New subsection (b) explains the procedure by which the AHS files a Request to Docket Case form at SOAH, under the SOAH Rules of Procedure. New subsection (c) refers to 1 TAC §155.51, which provides that SOAH acquires jurisdiction after the Request to Docket Case form has been filed. New subsection (d) describes the preparation, filing, and service of the Notice of Hearing, citing the applicable provisions of the Government Code, §2001.051 and §2001.052, and the SOAH Rules of Procedure, 1 TAC §155.401, concerning the requirements for a Notice of Hearing. The subsection provides that the AHS will include in the Notice of Hearing the SOAH hearing number and the date of the hearing scheduled by SOAH if an oral hearing was selected. The subsection further provides that the AHS will file with SOAH and serve on the parties the Notice of Hearing together with all pleadings served on and by the agency, along with their attachments, including the Statement of Grounds, Position Letter, Reply, Response, and, any other documents the AHS intends to offer at the hearing. New subsection (e) provides that additional pleadings, exhibits, and other documents the parties may offer must be filed and served in accordance with SOAH Rules of Procedure and any orders issued by the ALJ. New subsection (f) provides that after SOAH acquires jurisdiction, any party may file a motion to convert a written submission hearing to an oral hearing, or an oral hearing to a written submission hearing, consistent with the SOAH Rules of Procedure.

New §1.21, concerning Notice of Setting and Permit Holder Reply for Certain Cigarette, Cigar and Tobacco Tax Cases. This new section is slightly revised from the text of current §1.14 (Notice of Setting for Certain Cigarette, Cigar and Tobacco Tax Cases). The title is changed to make it more accurately describe the section, and current subsection (b) is revised to conform the procedure by which notices of setting are served with new §1.6(f) (Service of Documents on Parties), which provides that unless otherwise required by law, service of notice of hearing shall be made in the manner required by Government Code, Chapter 2001.

New §1.22, concerning Discovery. This new section concerns the same general subject matter as current §1.33 (Discovery) but carries over none of the text. The new section is intended to ensure that the agency's Rules of Practice and Procedure are consistent with the SOAH Rules of Procedure governing discovery, which were extensively modified effective January 1, 2017. See 1 TAC §§155.251, 155.253, 155.255, 155.257, and 155.259. New subsection (a) explains that the discovery procedures outlined in this section do not modify or affect a taxpayer's obligations to maintain and produce contemporaneous records and supporting documents appropriate to the tax or fee for which the taxpayer is responsible. General statutes governing a taxpayer's obligations to maintain or produce records and documents include, but are not limited to, Tax Code, §111.0041 ("Records; Burden to Produce and Substantiate Claims") and Tax Code, §111.105 ("Tax Refund; Hearing"). A specific tax or fee may also impose a duty to keep records or provide information specific to that tax or fee; see, for example, Tax Code, §171.205 ("Additional Information Required by Comptroller," relating to franchise tax) and Tax Code, §151.025 ("Records Required to Be Kept," relating to sales tax). New subsection (b) states the comptroller's policy of encouraging the informal exchange of documents and other information. While discovery is useful and necessary in some cases, in other cases, formal discovery may impose unnecessary burdens or cause delays to the efficient resolution of contested cases. New subsection (c) provides that the parties may conduct formal discovery after SOAH acquires jurisdiction over the contested case. Subsection (c) refers to the relevant SOAH Rules of Procedure that govern formal discovery. 1 TAC §155.251 contains general provisions including, among other things, that discovery may begin when SOAH acquires jurisdiction over the contested case and that the discovery period ends ten days before the hearing on the merits begins unless otherwise ordered by the judge or agreed by the parties. 1 TAC §155.253 provides the procedures governing depositions. 1 TAC §155.255 describes the forms and procedures of written discovery. 1 TAC §155.257 provides the procedures for issuing subpoenas and commissions. Finally, 1 TAC §155.259 describes the procedures related to discovery motions. Timing the discovery period to occur after SOAH acquires jurisdiction encourages the parties to cooperate in the informal exchange of documents and information, which may lead to the early resolution of the contested case, in whole or in part, without the burdens and expenses of formal discovery. In addition, discovery before SOAH acquires jurisdiction may lead to unresolved discovery disputes or allow for potential discovery abuses, as there is no judge or other tribunal to oversee the discovery process. Allowing discovery to occur after SOAH acquires jurisdiction and an ALJ is assigned to the case ensures the parties have a forum to quickly resolve discovery disputes or address discovery abuses as soon as they arise, through motions for protection, motions to compel, or other means. See 1 TAC §155.259 (Discovery Motions). Allowing formal discovery to occur after an ALJ acquires jurisdiction is consistent with the applicable sections of the Tax Code and Government Code. Tax Code, §111.00455(a) provides that the "The State Office of Administrative Hearings shall conduct any contested case hearing as provided by Section 2003.101, Government Code, in relation to the collection, receipt, administration, and enforcement of: (1) a tax imposed under this title; and (2) any other tax, fee, or other amount that the comptroller is required to collect, receive, administer, or enforce under a law not included in this title." Government Code, §2003.101 (Tax Hearings) provides the ALJ in tax cases with the authority to impose appropriate sanctions for "abuse of the

discovery process in seeking, making, or resisting discovery," which may include "disallowing further discovery of any kind or of a particular kind by the offending party." The Government Code further provides SOAH with explicit rulemaking authority to adopt discovery rules for the hearings it conducts: "The chief administrative law judge shall adopt rules that govern the procedures, including the discovery procedures, that relate to a hearing conducted by the office." Government Code, §2003.050. Effective January 1, 2017, SOAH has adopted detailed discovery rules to apply to the hearings it conducts; see 1 TAC §§155.251, 155.253, 155.255, 155.257, and 155.259. The SOAH discovery rules expressly contemplate that discovery in hearings over which it has jurisdiction will not commence until SOAH acquires jurisdiction; see 1 TAC §155.251(a) ("Discovery may begin when SOAH acquires jurisdiction under §155.51 of this chapter") and §155.51(d) ("After SOAH acquires jurisdiction, any party may initiate discovery or move for appropriate relief, including evidentiary rulings, continuances, summary dispositions, and setting of proceedings.")

New §1.23, concerning Consolidated and Joint Hearings; Severance. This new section carries over some text of current §1.37 (Joint Hearings; Severance), with some changes. New subsection (a) explains that a party may request that the ALJ issue an order to consolidate or join two or more cases docketed at SOAH, if they involve the same taxpayer, or if they involve more than one taxpayer with common issues of law or fact, when a consolidated or joint hearing will promote the fair and efficient handling of the matters. This conforms to SOAH Rule of Procedure 1 TAC §155.155(c), which provides the authority and basis for the ALJ to enter an order of consolidation or joinder. Subsection (a) also provides that the ALJ may issue an order consolidating or joining the cases absent a request by a party and without prior notice to the parties. This reflects current practice, where an ALJ will issue an order to consolidate clearly related contested cases shortly after they are docketed at SOAH. This subsection also makes clear that joinder or consolidation may not be ordered if it would result in the release of confidential taxpayer information in violation of Government Code, §2003.104 (Confidentiality of Tax Hearing Information), Tax Code §111.006 (Confidentiality of Information), or any other statutory provision protecting confidential taxpayer information. New subsection (b) allows a party to request the ALJ to sever the cases where two or more cases have been consolidated or joined for purposes of a hearing, and provides that the ALJ may issue an order severing the cases if separate hearings will promote the fair and efficient handling of the matters.

New §1.24, concerning Interested Parties. This new section carries over some text from current §1.36 (Interested Parties), with modifications. In certain contested cases, it may be appropriate to allow a person who has a direct pecuniary interest in the resolution of the case to be admitted as an interested party, with participation limited to the extent of the party's interest. While the current section allows the admission of an interested person at the discretion of the comptroller, the proposed new section is intended to make clear that an interested party will not be admitted to a contested case unless all parties consent. The amended section also specifies that an interested party must submit a request to be admitted to a contested case to the tax hearings attorney assigned to the case, who will transmit the request to the parties of record, and to SOAH if the case is docketed there.

New §1.25, concerning Nonbinding Nature of Agreed Facts. This new section carries over the text of current §1.35 (Nonbinding Nature of Agreed Facts) without change except to standardize capitalization usage with other sections.

New §1.26, concerning Burden and Standard of Proof in Contested Cases. This new section concerns the same subject matter as current §1.40 (Burden of Proof) but carries over none of the text. The new section explains the burdens and standards of proof applied to the AHS and taxpayers in contested cases subject to this subchapter. New subsection (a) reflects the general rule that the Tax Code places the burden of proof on the taxpayer, and this burden extends through any "administrative or judicial proceeding." See Tax Code, §111.0041 (Records; Burden to Produce and Substantiate Claims). Although the Tax Code places the burden of proof on the taxpayer, the comptroller will, by rule, continue to assume the burden of persuasion in certain fraud cases identified in new subsection (b). Furthermore, the comptroller will, by rule, assume a "clear and convincing" standard of proof in these cases. New subsections (c), (d), and (e) follow case law regarding the burden of proof in other circumstances. See *Bullock v. National Bancshares Corp.,* 584 S.W.2d 268, 272 (Tex. 1979) ("the burden of proof is on the claimant to clearly show that it comes within the statutory exemption"); *Texas Citrus Exch. v. Sharp,* 955 S.W.2d 164, 168 (Tex. App. - Austin 1997, no pet.) ("the burden shifts back to the Comptroller to prove the use fits within the exclusion"); *Sergeant Enter., Inc. v. Strayhorn,* 112 S.W.3d 241, 245 (Tex. App. - Austin 2003, no pet.) ("appellant has the burden of clearly demonstrating that it is entitled to the deduction").

New §1.30, concerning Settlement in a Contested Case Based on Insolvency. This new section carries over some text of current §1.2 (Settlement in a Contested Case Based on Insolvency), with significant additions. This new section explains the procedure by which a taxpayer may propose a settlement based on insolvency, the documentation that must be submitted with an insolvency settlement request, and the scope of the ALJ's authority to resolve factual disputes concerning a taxpayer's eligibility for consideration for an insolvency settlement if the matter is referred to SOAH, and provides a non-exclusive list of the factors the comptroller may consider in deciding to enter into an insolvency settlement agreement. New subsection (a) defines the terms "insolvent" and "insolvency settlement" by reference to Tax Code, §111.102. New subsection (b) explains the burden of proof on the taxpayer to show that it is insolvent or would be made insolvent if an insolvency settlement proposal is not accepted by the comptroller. New subsection (c) provides that an insolvency settlement proposal must be submitted after a hearing number has been assigned and before a notice of hearing has been issued. New subsection (d) provides that an insolvency settlement proposal must specify the bases of eligibility and must propose specific settlement terms, including the total amount to be paid and the terms of any payment plan. New subsection (e) lists the documents that must be included with an insolvency settlement proposal, including all federal income tax returns and financial statements from the year immediately prior to the date of assessment to the most recent, bank statements for the six months immediately prior to the date of the insolvency settlement request, and documentation of assets, liabilities, ongoing financial obligations, and proof of any claimed insolvency, liquidation, or business cessation. New subsection (f) provides that if the comptroller does not accept a taxpayer's insolvency settlement proposal, the matter may be referred to SOAH, but only to resolve factual disputes regarding whether the taxpayer met the requirements of subsections (b), (d), and (e) of this section, and that the comptroller will not include the amount, payment sched-

ule, or other terms of a proposed settlement agreement in the Notice of Hearing. This subsection also provides that the parties retain discretion to reach agreement on the specific terms of a proposed settlement agreement, and discretion to decline to enter into a proposed settlement agreement, notwithstanding any recommendations on settlement contained in a proposal for decision. New subsection (g) provides that the comptroller may consider all relevant factors in determining whether to enter into an insolvency settlement agreement, including but not limited to: whether additional penalty has been assessed; whether the taxpayer is liable for outstanding amounts in other periods or taxes; whether the taxpayer has complied with the terms of previous resolution agreements; whether the assessment includes tax collected but not remitted; whether the settlement may hinder collection of the amounts owed from other parties who may also be liable for the amounts owed pursuant to Tax Code, §§111.016, 111.0611, 111.020, 111.024, and 171.255, or other law; whether the taxpayer is out of business or has started a new business; and whether the taxpayer has previously entered into an insolvency settlement.

New §1.31, concerning Resolution Agreements. This new section carries over the text of current §1.8 (Resolution Agreements) with minor changes to update obsolete terms.

New §1.32, concerning Dismissal of Case. This new section carries over the text of current §1.39 (Dismissal of Case), with no changes other than to update the references to other sections in this Division proposed for renumbering.

New §1.33, concerning Proposal for Decision and Exceptions. This new section carries over some text of current §1.27 (Proposal for Decision), with significant additions. The proposed new section conforms with SOAH's procedural rule concerning the proposal for decision and exceptions, 1 TAC §155.507, including the deadlines to submit or respond to exceptions to the proposal for decision.

New §1.34, concerning Comptroller's Decisions and Orders. This new section carries over some text of current §1.28 (Comptroller's Decisions and Orders), with significant additions. New subsection (a) provides that after SOAH returns jurisdiction of a contested case, the comptroller will review the record, the proposal for decision, and any exceptions and replies, and issue a decision unless the case has been resolved by agreement. New subsection (b) provides that if the comptroller determines that additional argument from the parties would be helpful before making a final determination, the comptroller will issue an order requesting that the parties submit written briefs on specified contested case issues, and that briefs will be limited to the issues identified in the order. New subsection (c) provides that the Office of Special Counsel for Tax Hearings will send each decision and order to the taxpayer's designated representative for notice and the assigned tax hearings attorney. New subsection (d) provides that a decision or order is final upon the expiration of the period for filing a motion for rehearing, if one is not timely filed, or, if one is timely filed, then when the motion is overruled by an order, by operation of law, or on a date agreed to by all parties. New subsection (e) provides that a party may file a statement that it waives its right to file a motion for rehearing. An amendment to subsection (e) was made to correct a grammatical error. New subsection (f) provides that if the comptroller grants a motion for rehearing, the decision or order is vacated and the comptroller will issue a new decision or order on rehearing.

New §1.35, concerning Motion for Rehearing. This new section carries over the text of current §1.29 (Motion for Rehearing), with minor changes to update the references to other sections in this Division proposed for renumbering and to specify that motions for rehearing must be filed with the Office of Special Counsel for Tax Hearings.

No comments were received regarding adoption of the new sections.

The division is adopted under Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, and Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The division implements Government Code, §§2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, 2001.051 (Opportunity for Hearing and Participation; Notice of Hearing), 2001.052 (Contents of Notice), 2001.056 (Informal Disposition of Contested Case), 2001.061 (Ex Parte Consultations), 2001.141 (Form of Decision; Findings of Fact and Conclusions of Law), 2001.142 (Notification of Decisions and Orders), 2001.143 (Time of Decision), 2001.144 (Decisions or Orders; When Final), 2001.145 (Motions for Rehearing: Prerequisites to Appeal), 2001.146 (Motions for Rehearing: Procedures), and 2001.147 (Agreement to Modify Time Limits). The proposed division also implements Government Code, §2003.101 (Tax Hearings) and §2003.104 (Confidentiality of Tax Hearing Information). The proposed division implements Tax Code, §§111.0041 (Records; Burden to Produce and Substantiate Claims), 111.00455 (Contested Cases Conducted by State Office of Administrative Hearings), 111.006 (Confidentiality of Information), 111.008 (Deficiency Determination), 111.009 (Redetermination), 111.016 (Payment to the State of Tax Collections), 111.020 (Tax Collection on Termination of Business), §111.022 (Jeopardy Determination), 111.023 (Written Authorization), 111.024 (Liability in Fraudulent Transfers), 111.061 (Penalty on Delinquent Tax or Tax Reports), 111.0611 (Personal Liability for Fraudulent Tax Evasion), 111.102 (Settlement on Redetermination), 111.1042 (Tax Refund: Informal Review), 111.105 (Tax Refund: Hearing), 112.151 (Suit for Refund), 151.054 (Gross Receipts Presumed Subject to Tax), and 171.255 (Liability of Director and Officers).

§1.34. Comptroller's Decisions and Orders.

(a) After SOAH returns jurisdiction of a contested case to the agency, the comptroller will review the record, the proposal for decision, and any exceptions and replies, and will issue a decision on the proposal for decision, unless the case is dismissed under §1.32 of this title (relating to Dismissal of Case).

(b) If the comptroller determines that additional argument from the parties will be helpful before making a final decision in a contested case, the comptroller will issue an order requesting that the parties submit written briefs on specified contested case issues. Briefs will be limited to the issues identified in the order and arguments addressing any issues not identified in the order will not be considered.

(c) The Office of Special Counsel for Tax Hearings will send decisions and orders to the taxpayer's designated representative for notice and the Tax Hearings Attorney assigned to the hearing. Refer to

§1.3 of this title (relating to Representation and Participation) for additional guidance.

(d) A decision or order is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is signed;

(B) the motion is overruled by operation of law; or

(3) on the date specified in the decision or order if all parties have agreed in writing or on the record. The agreed date may not be before the date the decision or order is signed.

(e) A party may file a statement that it waives its right to file a motion for rehearing. Refer to §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings).

(f) If the comptroller grants a motion for rehearing, the decision or order is vacated and the comptroller will issue a new decision or order on rehearing.

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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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.286

The Comptroller of Public Accounts adopts amendments to §3.286, concerning Seller's and Purchaser's Responsibilities, Including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules, with changes to the proposed text as published in the October 19, 2018, issue of the *Texas Register* (43 TexReg 6933). In the wake of the United States Supreme Court's substantial nexus analysis in *South Dakota v. Wayfair,* 138 S. Ct. 2080 (June 21, 2018), the amendment restores the permit and collection requirements of the Tax Code that were unconstitutional prior to the *Wayfair* decision and establishes a safe harbor for remote sellers. The amendment also updates other provisions of the section and renames the section. The adoption of the amendment makes non-substantive changes to correct errors in the proposed text.

To streamline the title of this section, the comptroller replaces "Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules" with "Seller's and Purchaser's Responsibilities." Throughout the section, the comptroller adds or amends the titles to statutory references, rules, and forms. The comptroller does not intend to make substantive changes through these additions of and amendments to the statutory references, rules, and forms.

Current §3.286 omits "all {statutory} definitions of 'engaged in business' except those definitions requiring a 'physical presence' in Texas. This was done in response to a United States Supreme Court Case, *Quill v. North Dakota,* 112 S. Ct. 1094 (1992)." 21 TexReg 11,800 (Dec. 6, 1996). However, in *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080, 2099 (June 21, 2018), the United States Supreme Court concluded that "the physical presence rule of *Quill* is unsound and incorrect." The Court further stated that "{substantial} nexus is established when a taxpayer {or collector} 'avails itself of the substantial privilege of carrying on business' in that jurisdiction." *Wayfair,* 138 S. Ct. at 2099 (quoting *Polar Tankers, Inc. v. City of Valdez,* 557 U.S. 1, 11 (2009)). The Court also reiterated that "States may not impose undue burdens on interstate commerce."

In response to the *Wayfair* opinion, the comptroller now amends the definition of "engaged in business" in subsection (a)(4) to reinsert the omitted "engaged in business" activities described in Tax Code, §151.107 (Retailer Engaged in Business in This State). Omitted Tax Code, §151.107(a)(4) describes the systematic solicitation of sales through various types of communication systems, and omitted Tax Code, §151.107(a)(5) describes the solicitation of orders by mail or other media. These statutory provisions are incorporated into subsections (a)(4)(I) and (J). The comptroller reletters the subsequent subparagraphs of subsection (a)(4) and conforms cross-references to the new and renumbered subparagraphs.

The comptroller also revises subsection (a)(4)(G) of the definition of "engaged in business" to more closely track the wording of Tax Code, §151.107. And the comptroller adds subsection (a)(4)(M) to track the wording of Tax Code, §151.107(b).

The comptroller deletes the phrase "in this state" from the definition of seller in subsection (a)(10) to more closely track the definition of seller in Tax Code, §151.008.

In subsection (a)(10)(C), the comptroller replaces the term "storagemen" with the term "storage facility operators" to make the definition gender neutral.

To conform to current agency practice, the comptroller amends subsection (b)(1) to require a seller engaged in business in the state to obtain a single permit for its out-of-state places of business in addition to a permit for each place of business operated in this state.

In further response to the *Wayfair* opinion, the comptroller has reexamined the provision for out-of-state sellers in subsection (b)(2). Current subsection (b)(2) refers to each "out-of-state seller who has nexus," and current subsection (a)(8) defines "nexus" as "{s}ufficient contact with or activity within the state, as determined by state and federal law." These nexus statements provide little meaningful guidance to taxpayers. Therefore, the comptroller deletes them and replaces them with a safe harbor for remote sellers. The comptroller also removes references to "nexus" from subsections (a)(4)(L) and (d)(6).

In devising a safe harbor, the comptroller has considered whether the statutory "engaged in business" activities constitute substantial nexus based on availment of the substantial privilege of carrying on business in Texas; whether the statutory "engaged

in business" activities might constitute an undue burden on interstate commerce; the safe harbor thresholds established to date by other states that are implementing the *Wayfair* opinion; and the extent to which the failure to enforce the obligations associated with the statutory "engaged in business" activities might thwart the use tax statute purpose of leveling the playing field between in-state and out-of-state vendors.

After weighing these considerations, the comptroller is adopting a safe harbor in new subsection (b)(2) for remote sellers - sellers whose activities in the state are limited to the activities described in Tax Code, §151.107(a)(4) and (5) (proposed subsection (a)(4)(I) and (J) in this section). The comptroller will not impose the statutory permit and collection responsibilities on remote sellers whose total Texas revenue is below the safe harbor amount. The comptroller intends the safe harbor amount to simplify tax administration for both the agency and taxpayers by eliminating the need to litigate on a case-by-case basis whether the statutory collection obligation is unduly burdensome.

The safe harbor amount uses historical revenue, as was the case with the tax legislation in *Wayfair.* Because the safe harbor uses historical revenue, it is conceivable that taxpayers with similar current revenue below the safe harbor amount will have different collection obligations. The comptroller has determined that there are rational, legitimate reasons for this treatment. Among other reasons, a seller with historically higher revenue has enjoyed a greater benefit from the Texas market. Also, the courts have upheld the use of historical data in other similar contexts, specifically the Texas franchise tax, which bases the current privilege of doing business on prior year activity in the State. *See Rylander v. Palais Royal, Inc.,* 81 S.W.3d 909, 915 (Tex. App. - Austin 2002, pet. denied); *Rylander v. 3 Beall Brothers 3, Inc.,* 2 S.W.3d 562 (Tex. App. - Austin 1999, pet. denied).

In determining Texas revenue for the safe harbor, subsection (b)(2)(C) uses the statutory standards for determining whether the sale of taxable items are considered to be sales for storage, use, or other consumption in Texas. Tax Code, §151.104(a) (Sale for Storage, Use, or Consumption Presumed) provides that the sale of a taxable item by a person for delivery in this state is presumed to be a sale for storage, use, or consumption in this state. Tax Code, §151.011(b) ("Use" and "Storage") also provides that with respect to a taxable service, "use" means the derivation in this state of direct or indirect benefit from the service. These provisions are incorporated in subsection (b)(2)(C) and extended to cover all sales, including taxable sales, nontaxable sales, and tax-exempt sales.

Subsection (b)(2)(F) gives permitted remote sellers the option to terminate their collection obligations if their Texas sales decline below the specified amount. However, a remote seller must notify the comptroller in order to terminate its collection obligation.

In subsection (b)(2)(H), the comptroller postpones the permitting and collection requirements for remote sellers until October 1, 2019, to provide additional time for remote sellers to prepare for their collection and reporting obligations. The adoption of the amendment correctly refers to total Texas revenue in subsection (b)(2)(H). The proposed text incorrectly referred to "total revenue."

The comptroller adopts new subsection (b)(3), which allows a permitted seller to withdraw from the state if the seller no longer intends to make sales of taxable items in the state. The adoption of the amendment corrects a grammatical error contained in subsection (b)(3) of the proposed text. Subsequent paragraphs are renumbered.

The comptroller amends subsection (g)(6) to codify current agency policy regarding filing and remittance requirements of state agencies.

The comptroller adopts these amendments without retroactive effect. §151.022 (Retroactive Effect of Rules). This section will be effective January 1, 2019.

No comments were received regarding adoption of the amendment.

The comptroller adopts this amendment under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to amend rules to reflect changes in the constitution or laws of the United States and judicial interpretations thereof.

This amendment implements Tax Code, §151.107(a)(4), (a)(5), and (b) (Retailer Engaged in Business in the State) and *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (June 21, 2018).

§3.286. Seller's and Purchaser's Responsibilities.

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

(1) Consignment sale--The sale, lease, or rental of tangible personal property by a seller who, under an agreement with another person, is entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest, and is authorized to sell, lease, or rent the tangible personal property without additional action by the person having title to or another ownership interest in the tangible personal property.

(2) Direct sales organization--A person that typically sells taxable items directly to purchasers through independent salespersons and not in or through a place of business. The term "independent salespersons" includes, but is not limited to, distributors, representatives, and consultants. Items are typically sold person-to-person through in-home product demonstrations, parties, catalogs, and one-on-one selling. The term includes, but is not limited to, direct marketing and multilevel marketing organizations.

(3) Disaster- or emergency-related work--Repairing, renovating, installing, building, rendering services, or performing other business activities relating to the repair or replacement of equipment and property, including buildings, offices, structures, lines, poles, and pipes, that:

(A) is owned or used by or for:

(i) a telecommunications provider or cable operator;

(ii) communications networks;

(iii) electric generation;

(iv) electric transmissions and distribution systems;

(v) natural gas and natural gas liquids gathering, processing, and storage, transmission and distribution systems; or

(vi) water pipelines and related support facilities, equipment, and property that serve multiple persons; and

(B) is damaged, impaired, or destroyed by a declared state disaster or emergency.

(4) Engaged in business--Except as provided in subparagraphs (L) and (M) of this paragraph, a seller is engaged in business in this state if the seller:

(A) maintains, occupies, or uses in this state, permanently or temporarily, directly or indirectly, or through an agent by whatever name called, a kiosk, office, distribution center, sales or sample room or place, warehouse or storage place, or any other physical location where business is conducted;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates under the authority of the seller to conduct business in this state, including selling, delivering, or taking orders for taxable items;

(C) promotes a flea market, arts and crafts show, trade day, festival, or other event in this state that involves sales of taxable items;

(D) uses independent salespersons, who may include, but are not limited to, distributors, representatives, or consultants, in this state to make direct sales of taxable items;

(E) derives receipts from the sale, lease, or rental of tangible personal property that is located in this state or owns or uses tangible personal property that is located in this state, including a computer server or software to solicit orders for taxable items, unless the seller uses the server or software as a purchaser of an Internet hosting service;

(F) allows a franchisee or licensee to operate under its trade name in this state if the franchisee or licensee is required to collect sales or use tax in this state;

(G) otherwise conducts business in this state;

(H) is formed, organized, or incorporated under the laws of this state and the seller's internal affairs are governed by the laws of this state, notwithstanding the fact that the seller may not be otherwise engaged in business in this state pursuant to this section;

(I) engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

(J) solicits orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future; or

(K) holds a substantial ownership interest in, or is owned in whole or substantial part by, another person who:

(i) maintains a distribution center, warehouse, or similar location in this state and delivers property sold by the seller to purchasers in this state;

(ii) maintains a location in this state from which business is conducted, sells the same or substantially similar lines of products as the seller, and sells such products under a business name that is the same or substantially similar to the business name of the seller; or

(iii) maintains a location in this state from which business is conducted if the person with the location in this state uses its facilities or employees:

(I) to advertise, promote, or facilitate sales by the seller to purchasers; or

(II) to otherwise perform any activity on behalf of the seller that is intended to establish or maintain a marketplace for the seller in this state, including receiving or exchanging returned merchandise.

(iv) For purposes of this subparagraph only, "ownership" includes direct ownership, common ownership, or indirect ownership through a parent entity, subsidiary, or affiliate, and "substantial," with respect to ownership, constitutes an interest, whether direct or indirect, of at least 50% of:

(I) the total combined voting power of all classes of stock of a corporation;

(II) the beneficial ownership interest in the voting stock of the corporation;

(III) the current beneficial interest in the corpus or income of a trust;

(IV) the total membership interest of a limited liability company;

(V) the beneficial ownership interest in the membership interest of a limited liability company; or

(VI) the profits or capital interest of any other entity, including, but not limited to, a partnership, joint venture, or association.

(L) Effective June 16, 2015, a seller is not engaged in business in this state if the seller is an out-of-state business entity whose physical presence in this state is solely from the entity's performance of disaster- or emergency-related work during a disaster response period. An out-of-state business entity that remains in this state after a disaster response period has ended is engaged in business in this state if the entity conducts any of the activities described in subparagraphs (A) - (K) of this paragraph.

(i) For purposes of this subparagraph only, an "affiliate" is a member of a combined group as that term is described by Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(ii) For purposes of this subparagraph only, a "disaster response period" is:

(I) the period that:

(-a-) begins on the 10th day before the date of the earliest event establishing a declared state of disaster or emergency by the issuance of an executive order or proclamation by the governor or a declaration of the president of the United States; and

(-b-) ends on the earlier of the 120th day after the start date or the 60th day after the ending date of the disaster or emergency period established by the executive order or proclamation or declaration, or on a later date as determined by an executive order or proclamation by the governor; or

(II) the period that, with respect to an out-of-state business entity:

(-a-) begins on the date that the out-of-state business entity enters this state in good faith under a mutual assistance agreement and in anticipation of a state of disaster or emergency, regardless of whether a state of disaster or emergency is actually declared; and

(-b-) ends on the earlier of the date that the work is concluded or the seventh day after the out-of-state business entity enters this state.

(iii) For purposes of this subparagraph only, a "mutual assistance agreement" is an agreement to which one or more busi-

ness entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating critical infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business entity perform work in this state in anticipation of a state of disaster or emergency.

(iv) For purposes of this subparagraph only, an "out-of-state business entity" is a foreign entity that:

(I) enters this state at the request of, or is an affiliate of, an in-state business entity and performs work in Texas under a mutual assistance agreement; or

(II) enters this state at the request of an in-state business entity, under a mutual assistance agreement, or is an affiliate of an in-state business entity and enters this state at the request of an in-state business entity, the state of Texas, or a political subdivision of this state to perform disaster- or emergency-related work in this state during the disaster response period, and:

(-a-) except with respect to the performance of disaster- or emergency-related work, has no physical presence in this state and is not authorized to transact business in this state immediately before a disaster response period; and

(-b-) is not registered with the secretary of state to transact business in this state, does not file a tax report with this state, or a political subdivision of this state, and is not engaged in business with this state for the purpose of taxation during the tax year immediately preceding the disaster response period.

(M) A broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher that broadcasts, publishes, displays, or distributes paid commercial advertising in this state that is intended to be disseminated primarily to consumers located in this state and is only secondarily disseminated to bordering jurisdictions, including advertising appearing exclusively in a Texas edition or section of a national publication, is considered for purposes of this subsection to be the agent of the person placing the advertisement and is not considered to be engaged in business in this state as a result of those acts.

(5) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(6) Itinerant vendor--A seller who does not operate a place of business in this state and who travels to various locations in this state to solicit sales.

(7) Kiosk--A small, stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(8) Permit holder--A person to whom the comptroller has issued a sales and use tax permit. The term includes permitted sellers as well as permitted purchasers, but does not include a person who does not hold a Texas sales and use tax permit or whose sales and use tax permit is suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, or a person who has not received a sales and use tax permit due to an unsigned or incomplete application.

(9) Place of business--This term has the meaning given in §3.334 of this title (relating to Local Sales and Use Taxes).

(10) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services in this state for consideration. Seller is further defined as follows:

(A) A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless those persons hold active sales and use tax permits that the comptroller has issued.

(B) A direct sales organization that is engaged in business in this state is a seller responsible for the collection and remittance of the sales and use tax collected by the organization's independent salespersons.

(C) Pawnbrokers, storage facility operators, mechanics, artisans, or others who sell property to enforce a lien are sellers responsible for the collection and remittance of sales and use tax on the sale of such tangible personal property.

(D) A person engaged in business in this state who sells, leases, or rents tangible personal property owned by another person by means of a consignment sale is a seller responsible for the collection and remittance of the sales tax on the consignment sale.

(E) An auctioneer who owns tangible personal property or to whom tangible personal property has been consigned is a seller responsible for the collection and remittance of the sales and use tax on tangible personal property sold at auction. For more information, auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(11) Taxable item--Tangible personal property and taxable services. Except as otherwise provided in Tax Code, Chapter 151, the sale or use of a taxable item in electronic form instead of on physical media does not alter the item's tax status.

(A) Tangible personal property means property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, including a computer program as defined in §3.308 of this title (relating to Computers--Hardware, Computer Programs, Services, and Sales) and a telephone prepaid calling card, as defined in §3.344 of this title.

(B) Taxable services are those identified in Tax Code, §151.0101 (Taxable Services).

(b) Who must have a sales and use tax permit.

(1) Sellers. Except as provided in paragraph (2) of this subsection, each seller who is engaged in business in this state, including itinerant vendors, persons who own or operate a kiosk, and sellers operating temporarily in this state, must apply to the comptroller and obtain a sales and use tax permit for each place of business operated in this state and a single permit for its out-of-state places of business.

(2) Safe harbor for remote sellers.

(A) Remote seller defined. For purposes of this paragraph, a remote seller is a seller engaged in business in this state whose only activity in the state is described in subsection (a)(4)(I) or (J) of this section.

(B) Safe harbor. The comptroller will not enforce the permit requirement of this subsection or the collection obligation of subsection (d) of this section on a remote seller whose total Texas revenue in the preceding twelve calendar months is less than $500,000. If a remote seller's total Texas revenue exceeds that amount, the remote seller shall obtain a permit and begin collecting as provided in subparagraph (E) of this paragraph and shall continue to collect unless it terminates its collection obligation under subparagraph (F) of this paragraph.

(C) Total Texas revenue defined. For purposes of this paragraph, total Texas revenue means the gross revenue from the sale of tangible personal property and services for storage, use, or other consumption in this state recognized under the accounting method used by the seller, and includes separately stated handling, transportation, installation, and other similar fees collected by the seller in connection with the sale. Total Texas revenue includes taxable, nontaxable, and tax-exempt sales. A sale of an item for delivery in this state is presumed to be a sale for storage, use, or other consumption in this state. With respect to a service, "use" means the derivation in this state of direct or indirect benefit from the service.

(D) Consolidation of total Texas revenue. The comptroller may consolidate the total Texas revenue of sellers engaged in conduct that circumvents the safe harbor amount in subparagraph (B) of this paragraph.

(E) When to obtain a permit and begin collecting. No later than the first day of the fourth month after the month in which a remote seller exceeds the safe harbor amount in subparagraph (B) of this paragraph, the remote seller shall obtain a permit and begin collecting use tax. For example, if during the period of July 1, 2018, through June 30, 2019, a remote seller's total Texas revenue exceeds the safe harbor amount in subparagraph (B) of this paragraph, the remote seller shall obtain a permit by October 1, 2019, and begin collecting use tax no later than October 1, 2019.

(F) Terminating collection obligation. A remote seller that is required to be permitted may terminate its collection obligation under this paragraph after twelve consecutive months in which the remote seller's total Texas revenue for the preceding twelve calendar months is below the safe harbor amount in subparagraph (B) of this paragraph. In order to terminate its collection obligation, a remote seller must submit a form prescribed by the comptroller. Thereafter, the remote seller shall resume collection on the first day of the second month following any twelve calendar months in which the remote seller's total Texas revenue exceeds the safe harbor amount in subparagraph (B) of this paragraph. For example, if the total Texas revenue of a remote seller that previously terminated its collection obligation exceeds the safe harbor amount in subparagraph (B) of this paragraph during the period of January 1, 2020, through December 31, 2020, the remote seller shall resume collection on February 1, 2021.

(G) Records retention required. A remote seller that terminates its collection obligation shall comply with the record retention requirement of §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records). The remote seller must maintain sufficient documentation to verify the date on which the remote seller terminated its collection obligation under subparagraph (F) of this paragraph or ceases to engage in business in this state.

(H) Transition rule. Remote sellers will be subject to the permit requirement of this subsection and the collection obligation of subsection (d) of this section beginning on October 1, 2019. The initial twelve calendar months for determining a remote seller's total Texas revenue will be July 1, 2018, through June 30, 2019. If a remote seller's total Texas revenue during that period exceeds the safe harbor amount in subparagraph (B) of this paragraph, the seller shall obtain a permit by October 1, 2019, and begin collecting use tax no later than October 1, 2019.

(3) A seller that no longer intends to engage in business and make sales of taxable items in the state shall submit a form prescribed by the comptroller to terminate its permit and must obtain a new permit before it commences sales of taxable items in the state thereafter. The seller must maintain sufficient documentation to verify the date on which the seller ceases to engage in business in this state.

(4) Direct sales organizations. Independent salespersons of direct sales organizations are not required to hold sales and use tax permits to sell taxable items for direct sales organizations. Direct sales organizations engaged in business in this state are sellers responsible for holding sales and use tax permits and for the collection and remittance of sales and use tax on all sales of taxable items by their independent salespersons. See subsection (d)(3) of this section for more information about the collection and remittance of sales and use tax by direct sales organizations.

(5) Non-permitted purchasers. Persons who are not required to have a sales and use tax permit or who do not have a direct payment permit are still responsible for paying to the comptroller sales or use tax due on purchases of taxable items from sellers who do not collect and remit tax. See subsection (g)(9) of this section for return and payment information and §3.346 of this title (relating to Use Tax).

(6) Non-permitted sellers. Failure to obtain a sales and use tax permit does not relieve a seller required by this section or other applicable law to have a sales and use tax permit from the obligation to properly collect and remit sales and use taxes. Sellers whose sales and use tax permits are suspended, pursuant to subsection (l) of this section, or cancelled, pursuant to subsection (n) of this section, and sellers who have not received sales and use tax permits due to unsigned or incomplete applications, are still responsible for properly collecting and remitting sales and use taxes. See subsection (g) of this section for return and payment information.

(c) Obtaining a sales and use tax permit.

(1) A seller must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A seller who files an electronic application furnished by the comptroller is deemed to have signed the application and is not required to print and mail a signed application to the comptroller. A separate sales and use tax permit under the same taxpayer account number is issued to the applicant for each place of business. Sales and use tax permits are issued without charge.

(2) Each seller must apply for a sales and use tax permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The sales and use tax permit cannot be transferred from one seller to another. The sales and use tax permit is valid only for the seller to whom it was issued and for the transaction of business only at the address that is shown on the sales and use tax permit. If a seller operates two or more types of business at the same location, then only one sales and use tax permit is required.

(3) The sales and use tax permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling sales persons who operate from a central office needs only one sales and use tax permit, which must be displayed at that office.

(4) All sales and use tax permits of the seller will have the same taxpayer account number; however, each place of business will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations operated by the seller.

(d) Collecting sales and use tax due.

(1) Bracket system.

(A) Each seller must collect sales or use tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053 (Sales Tax Brackets). The practice of rounding off the amount of sales or use tax that is due on the sale of a taxable item is prohibited. Copies of the bracket system should be displayed in each place of business so both the seller and the purchaser may easily use them.

(B) The sales and use tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Sales and use tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410 (Method of Reporting Sales Tax; General Rule). When sales and use tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the sales and use tax due. Conversely, when the sales and use tax collected under the bracket system is less than the sales and use tax due on the seller's total receipts, the seller is required to remit sales and use tax on the total receipts even though the seller did not collect sales and use tax from the purchasers.

(2) Sales and use tax due is debt of the purchaser; document requirements.

(A) The sales and use tax due is a debt of the purchaser to the seller until collected. Unpaid sales or use tax is recoverable by the seller in the same manner as the original sales price of the taxable item itself, if unpaid, would be recoverable. The comptroller may proceed against either the seller or purchaser, or against both, until all applicable tax, penalty, and interest due has been paid.

(B) The amount of sales and use tax due must be separately stated on the bill, contract, or invoice to the purchaser or there must be a written statement to the purchaser that the stated price includes sales or use tax. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without sales and use tax included. The seller or purchaser may overcome the presumption by using the seller's records to show that sales or use tax was included in the sales price. Sellers located outside of Texas must identify the tax as Texas sales or use tax on their bill, contract, or invoice to the purchaser. If the out-of-state seller does not identify the tax as Texas sales or use tax at the time of the transaction, the seller is presumed not to have collected Texas sales or use tax. Either the seller or the purchaser may overcome the presumption by submitting evidence that clearly demonstrates that the Texas sales or use tax was remitted to the comptroller.

(3) Direct sales organizations. A direct sales organization is responsible for the collection and remittance of the sales and use tax on all sales of taxable items in this state by the independent salespersons who sell the organization's product or service as explained in this paragraph. See subsection (b)(4) of this section for information about sales and use tax permits required to be held by direct sales organizations.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after taking the purchaser's order, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax on the actual sales price for which the independent salesperson sold the taxable item to the purchaser.

(B) If an independent salesperson purchases a taxable item from a direct sales organization before the purchaser's order is taken, then the direct sales organization must collect from the independent salesperson, and remit to the comptroller, the sales and use tax based on the organization's suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual sales price for which the item was sold to the salesperson at the tax rate in effect for the salesperson's location.

(D) Incentives, including rewards, gifts, and prizes.

(i) Direct sales organizations owe sales and use tax on the cost of all taxable items used as incentives that are transferred to a recipient in this state, including purchasers, independent salespersons, and persons who host a direct sales event.

(ii) Direct sales organizations must collect sales or use tax on the total amount of consideration received in exchange for taxable items, including items purchased with hostess points or similar forms of compensation paid to a person for hosting a direct sales event and items that are earned by the host based on the volume of purchases. The redemption of reward points in exchange for taxable items is subject to sales tax under Tax Code, §151.005(2) ("Sale" or "Purchase"). See also §3.283 of this title (relating to Bartering Clubs and Exchanges).

(4) Printers. A printer is a seller of printed materials and is required to collect sales and use tax on sales of those materials in this state. A printer who is engaged in business in this state, however, is not required to collect the sales and use tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both inside and outside of this state; and

(C) the purchaser issues a properly completed exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to this state all the sales and use taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (g)(4) of this section for additional reporting requirements.

(5) Fundraisers by exempt entities. Regardless of the contractual terms between a for-profit entity and a non-profit exempt entity relating to the sale of taxable items, other than amusement services, as part of any fundraiser, the for-profit entity will be considered the seller of the items under Tax Code, §151.024 (Persons Who May be Regarded as Retailers), must be a permit holder, and is responsible for the proper collection and remittance of any sales or use tax due. The exempt entity and its representatives will be considered as representatives of the for-profit entity. The for-profit entity may advertise in a sales catalog or state on each invoice that sales and use tax is included, as provided under paragraph (2) of this subsection, or may require that the sales and use tax be calculated and collected by its representatives based on the sales price of each taxable item. Fundraisers conducted by exempt entities in this manner do not qualify as a tax-free sale day. For more

information on exempt entities and tax-free sales days, see §3.322 of this title (relating to Exempt Organizations). For more information on amusement services, see §3.298 of this title (relating to Amusement Services).

(6) Local sales and use tax. A seller who is required to be permitted in this state is required to properly collect and remit local sales and use tax even if no sales and use tax permit is required at the location where taxable items are sold. For more information on the proper collection of local taxes, see §3.334 of this title.

(e) Sales and use tax returns and remitting tax due.

(1) Forms prescribed by the comptroller. Sales and use tax returns must be filed on forms that the comptroller prescribes. The fact that a person does not receive or obtain the correct forms from the comptroller does not relieve a person of the responsibility to file a sales and use tax return and to remit the required sales and use tax.

(2) Signatures. Sales and use tax returns must be signed by the person who is required to file the sales and use tax return or by the person's duly authorized agent, but need not be verified by oath.

(3) Permit holders.

(A) Each permit holder is required to file a sales and use tax return for each reporting period, even if the permit holder has no sales or use tax to report for the reporting period.

(B) Each permit holder must remit sales and use tax on all receipts from sales or purchases of nonexempt taxable items, less any applicable discounts as provided by subsection (h) of this section.

(C) Each permit holder shall file a single sales and use tax return together with the tax payment for all businesses that operate under the same taxpayer number. The sales and use tax return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet.

(D) Consolidated reporting by affiliated entities is not allowed. Each legal entity engaged in business in this state is responsible for filing a separate sales and use tax return.

(4) Electronic returns and remittances. Certain persons must file returns and transfer payments electronically as provided by Tax Code, §111.0625 (Electronic Transfer of Certain Payments) and §111.0626 (Electronic Filing of Certain Reports). For more information, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(f) Due dates.

(1) General rule. Sales and use tax returns and remittances are due no later than the 20th day of the month following each reporting period end date unless otherwise provided by this section. Sales and use tax returns and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(A) Sales and use tax returns submitted by mail must be postmarked on or before the due date to be considered timely.

(B) Sales and use tax returns filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(2) Due dates for payments made using an electronic funds transfer method approved by the comptroller are provided at §3.9(c) of this title.

(3) Extensions for persons located in an area designated in a state of disaster or state of emergency declaration. The comptroller may grant an extension of not more than 90 days to make or file a sales and use tax return or pay sales and use tax that is due by a person located in an area designated in an executive order or proclamation issued by the governor declaring a state of disaster or state of emergency, or an area that the president of the United States declares a major disaster or emergency, if the comptroller finds the person to be a victim of the disaster or emergency. The person owing the sales and use tax may file a written request for an extension at any time before the expiration of 90 days after the original due date. If an extension is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and penalties are assessed and determined as though the last day of the extension were the original due date.

(g) Reporting periods.

(1) Quarterly filers. Permit holders who have less than $1,500 in state sales and use tax per quarter to report may file sales and use tax returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(2) Yearly filers. Permit holders who have less than $1,000 in state sales and use tax to report during a calendar year may file yearly sales and use tax returns upon authorization from the comptroller.

(A) Authorization to file sales and use tax returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file sales and use tax returns on a yearly basis will be denied if a permit holder's liability exceeded $1,000 in the prior calendar year.

(C) A permit holder who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a permit holder's state sales and use tax liability is greater than $1,000 during a calendar year. The permit holder must file a sales and use tax return for that month or quarter, depending on the amount, in which the sales and use tax payment or liability is greater than $1,000. On that return, the permit holder must report all sales and use taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, thereafter for as long as the yearly sales and use tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly sales and use tax returns.

(F) Yearly filers must report on a calendar year basis. The sales and use tax return and payment are due on or before January 20 of the next calendar year.

(3) Monthly filers. Permit holders who have $1,500 or more in state sales and use tax per quarter to report must file monthly sales and use tax returns except for permit holders who prepay the sales and use tax as provided in subsection (h) of this section.

(4) Printers. A printer who is not required to collect sales and use tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(4) of this section must file a quarterly special use tax report, Form 01-157, Texas Special Use Tax Report for Printers, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form, with the comptroller on or before the last day of the month following the quarter. The report must contain the name and address of each purchaser with the sales price and date of each sale. The printer is still required to file sales and use tax returns to report and remit sales and use taxes that the printer collected

from purchasers on transactions that do not meet the requirements of subsection (d)(4) of this section.

(5) Local sales and use tax. Each permit holder who is required to collect, report, and remit a city, county, special purpose district, or metropolitan transit authority/city transit department sales and use tax must report the amount subject to local sales and use tax on the state sales and use tax return described in subsection (e) of this section.

(6) State agencies. Sales and use taxes must be deposited with the comptroller within the time period specified by law for deposit of state funds. State agencies may file sales and use tax returns through electronic reporting methods provided by the comptroller, which allocates total sales and use tax deposits by state and local taxing authority. State agencies that deposit sales and use taxes according to Accounting Policy Statement Number 8 are not required to file a separate sales and use tax return, but must manually allocate total sales and use tax deposits by state and local taxing authority and deposit those amounts in accordance with the policy. Paragraphs (1) - (3) of this subsection do not apply to agencies following Accounting Policy Statement Number 8, as a fully completed deposit request voucher is deemed to be the sales and use tax return filed by these agencies.

(7) Refunds on exports. Sellers who refund sales tax on exports based on customs broker certifications should refer to §3.360 of this title (relating to Customs Brokers).

(8) Direct payment permit holders. Yearly and quarterly filing requirements, as discussed in this subsection, and prepayment discounts and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(9) Non-permitted purchasers. A person who does not hold a sales and use tax permit or a direct payment permit must pay sales or use tax that is due on purchases of taxable items when the sales or use tax is not collected by the seller. The sales or use tax is to be remitted on comptroller Form 01-156, Texas Use Tax Return, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) A non-permitted purchaser who owes less than $1000 in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file the return on or before the 20th of January following the year in which the purchases were made.

(B) A non-permitted purchaser who owes $1000 or more in sales and use tax on all purchases made during a calendar year on which sales and use tax was not collected by the seller must file a return and remit sales and use taxes due on or before the 20th of the month following the month when the $1000 threshold is reached and thereafter file monthly returns and make sales and use tax payments on all purchases on which sales and use tax is due.

(h) Discounts; prepayments; penalties and interest relating to filing sales and use tax returns.

(1) Discounts. Unless otherwise provided by this section, each permit holder may claim a discount for timely filing a sales and use tax return and paying the taxes due as reimbursement for the expense of collecting and remitting the sales and use tax. The discount is equal to 0.5% of the amount of sales and use tax due and may be claimed on the return for each reporting period and is computed on the amount timely reported and paid with that return.

(2) Prepayments. Prepayments may be made by permit holders who file monthly or quarterly sales and use tax returns. The amount of the prepayment must be a reasonable estimate of the state and local sales and use tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A permit holder who makes a timely prepayment based upon a reasonable estimate of sales and use tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made.

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the sales and use tax is due.

(D) A permit holder who makes a timely prepayment must file a sales and use tax return showing the actual liability and remit any amount due in excess of the prepayment on or before the 20th day of the month that follows the quarter or month for which a prepayment was made. If there is an additional amount due, the permit holder may retain the 0.5% reimbursement on the additional amount due, provided that both the sales and use tax return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the permit holder will be mailed an overpayment notice or refund warrant.

(E) Remittances that are less than a reasonable estimate, as described by this paragraph, are not regarded as prepayments and the 1.25% discount will not be allowed. If the permit holder owes more than $1,500 in a calendar quarter, the permit holder is regarded as a monthly filer. All monthly sales and use tax returns that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(3) Penalties and interest.

(A) If a person does not file a sales and use tax return together with payment on or before the due date, the person forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the person, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(B) A person who fails to timely file a sales and use tax return when due shall pay an additional penalty of $50. The penalty is due regardless of whether the person subsequently files the sales and use tax return or whether no taxes are due for the reporting period.

(i) Reports of alcoholic beverage sales to retailers. Each brewer, manufacturer, wholesaler, winery, distributor, or package store local distributor shall electronically file a report of alcoholic beverage sales to retailers, as that term is defined in §3.9(e)(2) of this title, as provided in that section.

(j) Records required for comptroller inspection. See §3.281 of this title and §3.282 of this title.

(k) Resale and exemption certificates. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(l) Suspension of sales and use tax permit.

(1) If a permit holder fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the permit holder's sales and use tax permit or permits.

(2) Before a permit holder's sales and use tax permit is suspended, the permit holder is entitled to a hearing before the comptroller to show cause why the permit should not be suspended. The comptroller shall give the permit holder at least 20 days notice. The notice will include a statement of the matters asserted and procedures to be followed. See §1.5(d) of this title (relating to Initiation of a Hearing).

(3) After a sales and use tax permit has been suspended, a new permit will not be issued to the same person until the person has posted sufficient security and satisfied the comptroller that the person will comply with both the provisions of the law and the comptroller's rules and regulations.

(m) Refusal to issue sales and use tax permit. The comptroller is required by Tax Code, §111.0046 (Permit or License), to refuse to issue any sales and use tax permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(n) Cancellation of sales and use tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales and use tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the sales and use tax permit, and the comptroller may cancel the sales and use tax permit. "No business activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a sales and use tax permit is cancelled, the person may reapply and obtain a new sales and use tax permit upon request, provided the issuance is not prohibited by subsection (m) of this section, or by Tax Code, §111.0046.

(o) Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 (Tax Collection on Termination of Business) and §111.024 (Liability in Fraudulent Transfers), provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(p) Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title (relating to Criminal Offenses and Penalties).

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 November 29, 2018.

TRD-201805083
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: January 1, 2019
Proposal publication date: October 19, 2018
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.293

The Comptroller of Public Accounts adopts amendments to §3.293, concerning Food; Food Products; Meals; Food Service, without changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6807). The comptroller amends the section to reflect the changes in Tax Code, §151.314 (Food and Food Products), made by House Bill 4054, 85th Legislature, 2017, effective September 1, 2017. The comptroller also amends the section to reflect changes in Alcoholic Beverage Code, §48A (Passenger Bus Beverage Permit) made by House Bill 3101, 85th Legislature, 2017, effective May 29, 2017. The comptroller also adopts amendments to correct a spelling error, provide guidance on what constitutes a soft drink, and change the title of the food stamp program to reflect its current title.

Subsection (a) provides definitions. The comptroller defines "bakery" in new paragraph (1) to implement House Bill 4054. The comptroller bases the definition on Tax Code, §151.314(b-2)(1) and incorporates the comptroller's determination of the meaning of the terms "retail location," "primarily," and "predominantly." The comptroller partially derives the meaning of the term "retail location" from the online Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/retail%20store (last viewed on November 8, 2017). The comptroller determines primarily and predominantly to mean greater than 50%. The comptroller further provides that a table or booth operated by a retailer at a multi-seller marketplace may qualify as a bakery. The comptroller renumbers subsequent paragraphs accordingly.

In renumbered paragraph (2), the comptroller amends the definition of "bakery items," to implement House Bill 4054. The comptroller defines the term using the meaning assigned by Tax Code, §151.314(b-2)(2).

The comptroller amends renumbered paragraph (6), defining the term "eating utensil," to expand the definition and provide examples. The comptroller corrects the spelling of "sherbet," in renumbered paragraph (14)(G). The comptroller provides additional guidance on the meaning of the term soft drink in renumbered paragraph (15).

The comptroller deletes information relating to the sale of bakery items in subsection (b) in order to consolidate all information relating to sales tax imposed on sales of bakery items in subsection (c). The comptroller also divides the remaining information in subsection (b) into two paragraphs to make the subsection easier to read.

The comptroller amends subsection (c)(4) to add sales of liquor prepared and served by a person holding an airline beverage permit, passenger train permit, or passenger bus beverage permit issued by the Texas Alcoholic Beverage Commission. The amendment implements House Bill 3101, effective May 29, 2017, which exempts alcoholic beverages prepared and served by a passenger bus beverage permit holder from sales tax. In addition, the amendment incorporates into the rule the provisions of Texas Alcoholic Beverage Code, §34.04, which exempts alcoholic beverages prepared and sold by airline beverage permit holders, and §48.04, which exempts alcoholic beverages prepared and sold by passenger train permit holders.

The comptroller amends subsection (c)(7) and (8) to implement House Bill 4054. This legislation amends Tax Code, §151.314(c-3), effective September 1, 2017, to provide: (i) bakery items sold by a bakery are exempt, and (ii) bakery items sold at retail location other than a bakery are exempt unless sold with eating utensils. House Bill 4054 also amends Tax Code, §151.314(c-2)

to exclude bakery items sold by a bakery from the food that is taxable when sold by a restaurant or similar place of business or when sold in a heated state by the seller.

The comptroller amends subsection (e)(1) to correct the cross-reference the definition to bulk vending machines.

The comptroller amends subsection (f) to change references to food stamps and the food stamp program to the Supplemental Nutrition Assistance Program (SNAP).

The comptroller amends subsection (g) to state that sales of alcoholic beverages *by exempt nonprofit organizations* are taxable.

No comments were received regarding adoption of the amendment.

The comptroller adopts the amendment under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, §151.314 (Food and Food Products).

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 November 28, 2018.

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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Proposal publication date: October 12, 2018
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §§745.601, 745.8713, 745.8915, 745.8917, 745.8934, 745.8993, 745.9009, 745.9026, 745.9029, and 745.9037; repeal of §§745.603, 745.611, 745.613, 745.615, 745.616, 745.617, 745.619, 745.621, 745.623, 745.625, 745.626, 745.629, 745.630, 745.631, 745.633, 745.635, 745.637, 745.651, 745.653, 745.655, 745.656, 745.657, 745.659, 745.661, 745.663, 745.681, 745.683, 745.685, 745.686, 745.687, 745.689, 745.691, 745.693, 745.695, 745.696, 745.697, 745.699, 745.701, 745.703, 745.705, 745.707, 745.709, 745.711, 745.731, 745.733, 745.735, 745.751, and 745.753; new §§745.605, 745.607, 745.609, 745.611, 745.613, 745.615, 745.617, 745.619, 745.621, 745.623, 745.625, 745.627, 745.629, 745.631, 745.633, 745.635, 745.637, 745.639, 745.641, 745.643, 745.645, 745.647, 745.651, 745.653, 745.661, 745.663, 745.665, 745.667, 745.669, 745.671, 745.673, 745.681, 745.683, 745.685, 745.687, 745.689, 745.691, 745.693, 745.695, 745.697, 745.699, 745.731, 745.751 and 745.775, in 40 TAC, Chapter 745, Subchapter F, concerning Background Checks; Subchapter L, concerning Enforcement Actions; and Subchapter N, concerning Administrator's Licensing. The amendments, repeals, and new sections are adopted without changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6210), and therefore the rules will not be republished.

HHSC adopts the amendment to 40 TAC Chapter 745, §745.649, concerning a child-placing agency verifying a foster home prior to receiving background check determinations, §745.751, concerning what factors Licensing considers when determining if a person or an operation is an immediate threat to the health or safety of children and §745.775, concerning how a criminal conviction or a child abuse or neglect finding may affect the ability to receive or maintain an administrator's license, with changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6210).

BACKGROUND AND JUSTIFICATION

The Child Care and Development Block Grant (CCDBG) of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq. and supported in the federal regulations in 45 CFR Part 98. For the purposes of this preamble, the "Act" will include the requirements in the statute and the federal regulations.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act made significant reforms to the CCDF program to raise the health, safety, and quality of child care by mandating states to comply with a multitude of additional requirements in order to continue to receive the CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, the Child Care Licensing (CCL) department of the HHSC Regulatory Services Division is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance.

One of the provisions of the Act that has a significant impact on CCL and this chapter is related to background checks. One of the Act's requirements related to mandated fingerprint-based criminal history checks for home-based day care providers was implemented in 2016 in a phased-in approach. However, many of the Act's other background check requirements needed significant technological changes. The technological changes are nearing completion and the Act's other background check requirements are being implemented at this time.

In addition, House Bill (H.B.) 4094, 85th Legislature, Regular Session, 2017, amended Human Resources Code (HRC) §42.056 in order to comply with the Act's requirements. The amendments, repeals, and new sections make all operations consistent with the changes required by the Act and HB 4094.

COMMENTS

The 30-day comment period ended October 22, 2018.

During this period, HHSC received four comments regarding the proposed rules from four commenters, including Green Oak Learning Center, Christian Academy of Little Saints, Apples

and Bananas, and a listed family home. A summary of the comments relating to the rules and HHSC's responses follows.

Comment: Regarding §745.621(b)(1)(A), the commenter stated that renewal background checks should continue to be required every two years. The commenter stated that changing this requirement from every two years to every five years is too long to wait in reference to the safety of children.

Response: HHSC disagrees with the commenter. The federal regulations prevent a state from requiring fingerprint-based checks more often than every five years. In any event, the change to the system will be more efficient and will be safer for children. New §745.607 requires a fingerprint-based criminal history check of the FBI database of arrests for alleged crimes committed anywhere in the U.S. New §745.625 clarifies that the search that Texas will be conducting is the FBI national rap back service, which means that there will be no requirement for additional fingerprinting every five years and no waiting for arrest information every two or five years. Instead, any time a person is arrested in the U.S., Licensing will receive an automatic notice of the arrest. The five year renewal requirement is to simply make sure that the information on the subject of the background check is current. HHSC adopts this rule without changes.

Comments: There were three general comments that the rules have been reviewed, the rules were understood and the provider will adhere to the rules, and the rule changes were fair and appropriate.

Response: HHSC appreciates these comments.

In addition, a change was made to §745.649 to make the answer of the rule more responsive to the question in relation to an adoptive home. Historically, deleted §745.633 applied to both foster homes and adoptive homes, which is how the new question is also framed. The change from the proposed rule will clarify that a child-placing agency must receive background check determinations from the CBCU indicating that all household members of an adoptive home, which is similarly required for all household members of a foster family home, are eligible or eligible with conditions before the child-placing agency may approve the adoptive home.

SUBCHAPTER F. BACKGROUND CHECKS

DIVISION 1. DEFINITIONS

40 TAC §745.601

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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40 TAC §745.603

STATUTORY AUTHORITY

The repeal is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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. REQUESTING BACKGROUND CHECKS

40 TAC §§745.605, 745.607, 745.609, 745.611, 745.613, 745.615, 745.617, 745.619, 745.621, 745.623, 745.625

STATUTORY AUTHORITY

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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40 TAC §§745.611, 745.613, 745.615 - 745.617, 745.619, 745.621, 745.623, 745.625, 745.626, 745.629 - 745.631, 745.633, 745.635, 745.637

STATUTORY AUTHORITY

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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. DETERMINATIONS REGARDING BACKGROUND CHECKS

40 TAC §§745.627, 745.629, 745.631, 745.633, 745.635, 745.637, 745.639, 745.641, 745.643, 745.645, 745.647, 745.649, 745.651, 745.653

STATUTORY AUTHORITY

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

§745.649. Can a child-placing agency (CPA) verify a foster family home or approve an adoptive home prior to receiving the background check determinations?

No, a CPA must receive background check determinations from the CBCU indicating that all household members of a foster family home or adoptive home who must have a background check under §745.605 of this subchapter (relating to For whom must I submit requests for background checks?) are eligible or eligible with conditions before the CPA may verify the foster family home or approve the adoptive home.

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. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §§745.651, 745.653, 745.655 - 745.657, 745.659, 745.661, 745.663

STATUTORY AUTHORITY

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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DIVISION 4. CRIMINAL HISTORY, SEX OFFENDER REGISTRY, AND CHILD ABUSE OR NEGLECT FINDINGS

40 TAC §§745.661, 745.663, 745.665, 745.667, 745.669, 745.671, 745.673

STATUTORY AUTHORITY

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §§745.681, 745.683, 745.685 - 745.687, 745.689, 745.691, 745.693, 745.695 - 745.697, 745.699, 745.701, 745.703, 745.705, 745.707, 745.709, 745.711

STATUTORY AUTHORITY

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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Karen Ray
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DIVISION 5. EVALUATION OF RISK BECAUSE OF CRIMINAL HISTORY OR A CHILD ABUSE OR NEGLECT FINDING

40 TAC §§745.681, 745.683, 745.685, 745.687, 745.689, 745.691, 745.693, 745.695, 745.697, 745.699

STATUTORY AUTHORITY

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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DIVISION 5. DESIGNATED AND SUSTAINED PERPETRATORS OF CHILD ABUSE OR NEGLECT

40 TAC §§745.731, 745.733, 745.735

STATUTORY AUTHORITY

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Council
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DIVISION 6. DESIGNATED AND SUSTAINED PERPETRATORS OF CHILD ABUSE OR NEGLECT

40 TAC §745.731

STATUTORY AUTHORITY

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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Karen Ray
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DIVISION 6. IMMEDIATE THREAT OR DANGER TO THE HEALTH OR SAFETY OF CHILDREN

40 TAC §745.751, §745.753

STATUTORY AUTHORITY

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
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DIVISION 7. IMMEDIATE THREAT OR DANGER TO THE HEALTH OR SAFETY OF CHILDREN

40 TAC §745.751

STATUTORY AUTHORITY

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

§745.751. What factors does Licensing consider when determining if a person or an operation is an immediate threat to the health or safety of children?

Licensing considers the following factors when determining if a person, including the subject of a background check, or an operation is an immediate threat to the health or safety of children:

(1) The severity of the deficiency, including abuse or neglect;

(2) The circumstances surrounding the deficiency, including abuse or neglect;

(3) The seriousness of any injuries to children;

(4) The length of time since the deficiency, including abuse or neglect, occurred;

(5) Whether the deficiency has been repeated;

(6) The compliance history of the operation;

(7) The current regulatory status of the operation;

(8) How quickly corrections to the deficiency can be made;

(9) If any corrections have already been made;

(10) The role of the person in the abuse or neglect;

(11) The current position, role, and responsibilities of the person; and

(12) The degree and immediacy of the threat or danger.

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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Karen Ray
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Department of Family and Protective Services
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DIVISION 8. ADMINISTRATOR'S LICENSING

40 TAC §745.775

STATUTORY AUTHORITY

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

§745.775. How may a criminal conviction or a child abuse or neglect finding affect my ability to receive or maintain an administrator's license?

(a) You must meet the background check requirements that are part of the administrator's licensing process in Subchapter N of this chapter (relating to Administrator's Licensing).

(b) In addition to complying with the criminal conviction requirements specified in §745.661(a)(1) of this subchapter (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?), you are also monitored for offenses related to financial crimes, including all Title 7 Offenses Against Property, Title 8 Offenses Against Administration, and Title 11 Organized Crime offenses in the Penal Code.

(c) You may not receive or maintain an administrator's license if you:

(1) Have a criminal conviction as specified in §745.661(a)(1) of this subchapter or a child abuse or neglect finding as specified in §745.671 of this subchapter (relating to What types of findings from the Central Registry or out-of-state child abuse and neglect registries may affect a subject's ability to be present at an operation?) that would bar you from being present at an operation;

(2) Are on a sex offender registry; or

(3) Have a felony conviction of a financial crime, as specified in subsection (b) of this section, within the past 10 years.

(d) You may receive and maintain an administrator's license if you have a felony conviction of a financial crime older than 10 years or a misdemeanor conviction of a financial crime. However, these crimes do require a risk evaluation and Licensing may place restrictions on your license. You must have an approved risk evaluation before you may be present at an operation.

(e) You may receive and maintain an administrator's license if you have a criminal conviction or a child abuse or neglect finding that only requires a risk evaluation. However, Licensing may place restrictions on your license. You must have an approved risk evaluation before you may be present at an operation.

(f) In addition to the Administrator's Licensing background check process, the operation where you serve as an administrator must also request a background check on you, as specified in §745.605(a)(2)(A). This process is separate and apart from the Administrator's Licensing background check process.

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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SUBCHAPTER L. ENFORCEMENT ACTIONS
DIVISION 5. MONETARY ACTIONS

40 TAC §745.8713

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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 November 29, 2018.

TRD-201805102
Karen Ray
Chief Counsel
Department of Family and Protective Services
Effective date: January 13, 2019
Proposal publication date: September 21, 2018
For further information, please call: (512) 438-5559

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SUBCHAPTER N. ADMINISTRATOR'S LICENSING
DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

40 TAC §745.8915, §745.8917

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8934

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 4. RENEWING YOUR ADMINISTRATOR'S LICENSE

40 TAC §745.8993, §745.9009

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

40 TAC §745.9026, §745.9029

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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DIVISION 6. REMEDIAL ACTIONS

40 TAC §745.9037

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of the Department of Family and Protective Services to HHSC.

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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Karen Ray
Chief Counsel
Department of Family and Protective Services
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Proposal publication date: September 21, 2018
For further information, please call: (512) 438-5559

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 800, relating to General Administration, without changes, as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5332). The rules will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 800 is being revised to align the definition of Adult Education and Literacy (AEL) services with the definition found in the Workforce Innovation and Opportunity Act (WIOA) and to align the deobligation periods for AEL funds more appropriately with the AEL enrollment cycle.

WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act (WIA) of 1998. Title II of WIOA includes substantial changes to definitions relating to AEL. As previous definitions within Chapter 800 reflected WIA, the enactment of

WIOA renders those definitions out-of-date. Accordingly, the definition of "Adult Education and Literacy (AEL)" and other definitions in §800.2 shall be amended to align with the definitions in WIOA.

After several years of program operations at TWC, there is a need to reevaluate the rules by which AEL funds are deobligated based on the expenditure trends of AEL grant recipients. Like many education sector institutions, AEL grant recipients typically experience a majority of their enrollments during the first three months of the program year (July - September). When AEL grant recipients experience low enrollment during these months when highest enrollment is expected, program delivery statistics demonstrate the unlikelihood of increases later in the year being sufficient to offset initial low enrollment. Low enrollment numbers correlate to lower expenditure thresholds. Establishing expenditure thresholds based on enrollment in months four, five, six, or seven will enable TWC to deobligate the funds of grant recipients that have low expenditures earlier in the program year. As a result, TWC will have adequate time to reallocate funds to other AEL grant recipients with demonstrated higher enrollment and expenditures. Reallocation of funds earlier in the program year will also give grant recipients adequate time to educate and train participants, and participants will have adequate time to achieve outcomes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(1) is amended to align the definition of "Adult Education and Literacy (AEL)" with the definition in WIOA §203(1). AEL is now defined as "academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent; participate in job training and retraining programs or transition to postsecondary education and training; and obtain and retain employment."

Sections 800.2(15)(E) and 800.2(16) are removed because Project Reintegration of Offenders (Project RIO) is no longer operational. However, Local Workforce Development Boards (Boards) will continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

Throughout this section, references and citations pertaining to the repealed WIA have been updated to align with WIOA.

Paragraphs and subparagraphs have been renumbered and relettered as necessary.

SUBCHAPTER B. ALLOCATIONS

TWC adopts the following amendments to Subchapter B:

§800.78. Midyear Deobligation of AEL Funds

To improve the deobligation of AEL funds by aligning deobligation with the AEL enrollment cycle, §800.78(a)(1) is amended to change the months when expenditure thresholds are evaluated from the end of months five, six, seven, or eight of the program year (that is, midyear) to the end of months four, five, six, or seven (October, November, December, or January) of the program year. Changing the months of evaluation will allow recipients of reallocated funds additional time to enroll participants, educate and train them adequately to achieve outcomes, and fully spend the reallocated funds.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 November 26, 2018.

TRD-201805013
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 16, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER B. ALLOCATIONS

40 TAC §800.78

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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TRD-201805014
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 16, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 689-9855

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CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 805, relating to Adult Education and Literacy, without changes, as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5338):

Subchapter A. General Provisions, §§805.1 - §805.4

Subchapter B. Staff Qualifications, §805.21

Subchapter C. Service Delivery Structure and Alignment, §§805.41 - 805.43, §805.45

TWC adopts the repeal of the following sections of Chapter 805, relating to Adult Education and Literacy, with changes to §805.5 to correct the section title, as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5338). The corrected repeal will be republished.

Subchapter A. General Provisions, §805.5

Subchapter D. Other Provisions, §805.62

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted amendments to Chapter 805 is to align Adult Education and Literacy (AEL) provisions and definitions with the Workforce Innovation and Opportunity Act (WIOA) Title II, clarify language, delete obsolete terms, and extend the allowable terms of AEL advisory committee members.

WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act of 1998. Title II of WIOA includes substantial changes to definitions relating to AEL, participant eligibility, and eligible providers, as well as changes to the overall intent of the law. TWC staff has evaluated TWC Chapter 805 Adult Education and Literacy rules and determined that definitions must be updated and rules amended to align with WIOA.

Additionally, staff has identified the need to amend and repeal certain parts of Chapter 805 based on management of the program and the addition of new rules in the Texas Education Code (TEC).

In 2013, the AEL program and its appropriate rules were transferred from the Texas Education Agency (TEA) to TWC. One of the transferred rules relates to the awarding of diplomas to adults based on the secondary school curriculum, course credit requirements, and tests designated by the commissioner of education. That rule was not relevant to TWC operations, as it pertained to graduation criteria for secondary students who are adults. In 2017, legislation established specific requirements for adult high school diploma requirements, but limited the application of those requirements to nonprofit charter schools. Accordingly, based on TWC operations and the change in state law, there is no longer a need for diploma requirements that were included when AEL was transferred to TWC. Adopted amendments would repeal §805.5 and defer diploma requirements for adults to the TEA.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§805.1. Purpose

Section 805.1(b) is amended to align with the purpose of AEL as outlined in WIOA §203(1)(a) and (b). In §805.1(b), the term "basic education" is replaced by "academic instruction and education services below the postsecondary level," and "enables them to effectively" is replaced with "increase an individual's ability to." Section 805.1(b)(1) is amended to state, "read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent." Amended §805.1(b)(2) adds "or transition to postsecondary education and training." Section 805.1(b)(4) is removed.

§805.2. Definitions

Section 805.2(1) is amended to align the definition of "adult education" with the definition at WIOA §203(2), which is "programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training." Sections 805.2(1)(A), 805.2(1)(B), and 805.2(1)(C) are repealed.

In §805.2(10), the definition of "contact time" is amended to distinguish between testing and assessment services by adding "or testing" specifying "except for testing services used to determine eligibility."

The current definition of an eligible grant recipient in §805.2(11) is amended to align with the definition of an eligible provider in WIOA §203(5), adding that eligible grant recipients "are organizations that have demonstrated effectiveness in providing adult education and literacy activities." The list of eligible grant recipients in current §§805.2(11)(A) - (I) is amended as follows:

--Section 805.2(11)(B) is modified to replace the phrase "of demonstrated effectiveness" with "or faith-based organization."

--The phrase "of demonstrated effectiveness" is removed from §805.2(11)(C).

--Section 805.2(11)(H) is amended to specify that literacy services are AEL services, and "adults and families" is replaced with "eligible individuals."

--Current §805.2(11)(I) is amended to add "or coalition" after "consortium."

--New §805.2(11)(J) adds "a partnership between an employer and an entity described in any of subparagraphs (A) through (I)" as an eligible grant recipient.

§805.3. Federal and State AEL Funds

Section 805.3 is amended to align with the description of an individual in AEL programs for which federal AEL funds may be used to the definition of an eligible individual under WIOA. Amended §805.3(a) removes "out-of-school." Section 805.3(a)(1) replaces "lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society," with "are basic skills deficient." Section 805.3(a)(3) replaces "are unable to speak, read, or write the English language" with "are English language learners."

Section 805.3(b)(1) replaces "lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society," with "are basic skills deficient." Section 805.3(b)(3) replaces "are unable to speak, read, or write the English language" with "are English language learners."

Section 805.3(d) is amended to remove language that states that the use of AEL funds is for specific student populations.

§805.4. Essential Program Components

Section 805.4 is amended to align the essential AEL program components to the allowable and required AEL activities in WIOA. The current six essential program components are expanded and revised as follows:

--Section 805.4(1) is amended to remove "basic" from "adult basic education."

--Section 805.4(2) is amended to replace "programs for adults of limited English proficiency" with "literacy."

--Section 805.4(3) is amended to replace "adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma" with "workplace adult education and literacy activities."

--Section 805.4(4) is amended to replace "instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment" with "family literacy activities."

--Section 805.4(5) is renumbered as §805.4(9) and "paragraphs (1) - (4) of this section" is changed to "paragraphs (1) - (8) of this section."

--Section 805.4(6) is renumbered as §805.4(10).

--New §805.4(5) is added to include "English language acquisition services."

--New §805.4(6) adds "integrated English literacy and civics education."

--New §805.4(7) adds "workforce preparation activities."

--New §805.4(8) adds "integrated education and training."

§805.5. Diploma Requirements

Section 805.5 is repealed because these rules on diploma requirements are no longer relevant to AEL.

SUBCHAPTER B. STAFF QUALIFICATIONS

TWC adopts the following amendments to Subchapter B:

§805.21. Staff Qualifications and Training

Section 805.21(1) is amended by adding "instructional" before "aides," to clarify that instructional aides who provide direct instruction shall receive 15 hours of professional development each year. Section 805.21(6) adds "including instructional aides."

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC adopts the following amendments to Subchapter C:

§805.41. Procurement and Contracting

Section §805.41(b) is amended to replace "request for proposals (RFP)" with "grant solicitation" to align with TWC's direction on AEL competition process and requirements.

§805.42. Program Delivery System

Section 805.42(c)(2) is amended to replace "career training" with "workforce training," to align with WIOA policy on postsecondary education and training.

§805.43. Advisory Committees

Section 805.43(1)(C) replaces "one term" with "no more than two terms. The Commission shall provide direction when appointing a member to a second term," to expand Statewide Advisory Committee term limits to ensure allowable consistency and continuity on committee projects.

§805.45. Tuition and Fees

Section 805.45 adds a provision to align to 2 CFR §200.305(b)(5), specifying that funds generated by tuition and fees "must be expended before federal and state grant funds."

SUBCHAPTER D. OTHER PROVISIONS

TWC adopts the following amendments to Subchapter D:

§805.62. Evaluation of Programs

Section 805.62 is repealed, as WIOA requires that funds provided under WIOA §231 be used on state leadership activities, including monitoring and evaluating the quality of and improvement in AEL activities.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§805.1 - 805.4

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 November 26, 2018.

TRD-201805015
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 16, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

40 TAC §805.5

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.5. Diploma 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 November 26, 2018.

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 16, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §§805.41 - 805.43, 805.45

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER D. OTHER PROVISIONS

40 TAC §805.62

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 16, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 689-9855

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Board of Chiropractic Examiners

Rule Transfer

Under Texas Occupations Code §201.152 and §201.1525, the Texas Board of Chiropractic Examiners (Board) is authorized to promulgate necessary rules to regulate the practice of chiropractic. As part of its ongoing rule review process, the Board has determined that one rule is out of place in its current chapter, and that applicants, licensees, and the public find it difficult to lo cate. Therefore, the Board finds that a reorganization and renaming of this existing rule is needed to make it easier for readers to find the information they seek.

The transfer is effective January 1, 2019.

The following table outlines the rule transfer:

Figure: 22 TAC Chapter 75

Current **Chapter 75. Business Practices**	**Move To** **Chapter 72. License Applications and Renewals**
22 TAC §75.1. Notification of Change of Address, Electronic Mail Address, and Telephone Number	22 TAC §72.13. Required Change of Address, Email Address, and Telephone

TRD-201805136

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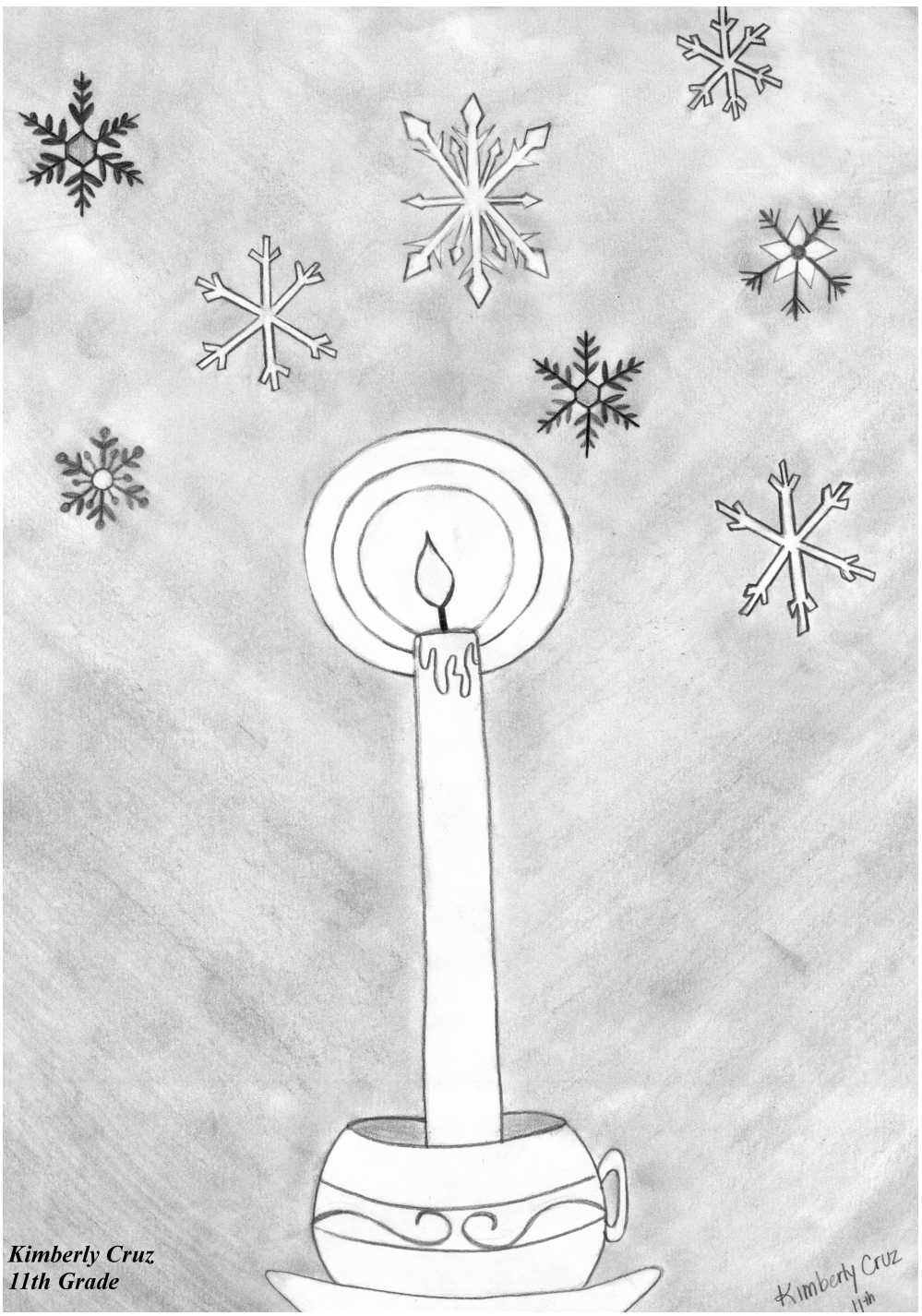

Kimberly Cruz
11th Grade

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (TSLAC) files this notice of intent to review and consider for readoption, revision, or repeal the rules in Chapter 1 of the Texas Administrative Code, Title 13, relating to Library Development. This includes review of the following rules:

SUBCHAPTER A LIBRARY SERVICES AND TECHNOLOGY ACT STATE PLAN

§1.21 State Plan for the Library Services and Technology Act in Texas

§1.22 Circulation

SUBCHAPTER B STANDARDS FOR ACCREDITATION OF A MAJOR RESOURCE SYSTEM OF LIBRARIES IN THE TEXAS LIBRARY SYSTEM

§1.41 Geographical Area of System

§1.42 Boundaries of System

§1.43 Long-Range Plan of System Services (Biennial Budget)

§1.44 Annual Program and Budget for System Services

§1.45 Reestablishment of System Services

§1.46 Interlibrary Loan and Reference and Referral Services

§1.47 Consulting and Continuing Education Services

§1.48 Criteria for Major Resource Centers

§1.53 Direct Grants-in-Aid: Prohibition

§1.54 Equalization Grants: Prohibition

§1.61 System Bylaws

§1.63 Proposal Requirements: Fiscal and Administrative Responsibility

§1.64 Cash Reserves: Regional Library Systems

§1.65 Directors and Officers of Regional Library Systems

§1.67 Federal Priorities

SUBCHAPTER C MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

§1.71 Definition of Population Served

§1.72 Public Library Service

§1.73 Public Library: Legal Establishment

§1.74 Local Operating Expenditures

§1.75 Nondiscrimination

§1.77 Public Library: Local Government Support

§1.79 Provisional Accreditation of Library

§1.80 Probational Accreditation of Library

§1.81 Quantitative Standards for Accreditation of Library

§1.82 Accreditation Based on Current Operating Budget

§1.83 Other Requirements

§1.84 Professional Librarian

§1.85 Annual Report

§1.86 Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, Units of Local, State, or Federal Government, Accredited Non-Public Elementary or Secondary Schools, or Special or Research Libraries

SUBCHAPTER D GRANTS: SYSTEM OPERATION, INCENTIVE, ESTABLISHMENT, AND EQUALIZATION

§1.91 System Operation Grants

§1.92 Incentive Grants

§1.94 Unserved County: Definition

§1.96 System Operation Grant: Formula

SUBCHAPTER E GRANTS: ELECTRONIC ACCESS

§1.100 Standards for Local Public Library Internet Access

SUBCHAPTER F SYSTEM ADVISORY COUNCIL

§1.111 Advisory Council

§1.112 Member Library Representatives

§1.113 Advisory Council Election

§1.114 Advisory Council Terms of Office

§1.115 Advisory Council Officers

§1.116 Representation on the Council

§1.117 Council Officers, Not Reappointed as Library Representative

§1.118 Advisory Council Vacancies

§1.119 Federated County and Multi-county Representation

§1.120 Council Review and Approval Process

§1.121 Disqualification of Council Members

§1.123 Voting by Member Library Representatives

This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Jennifer Peters, Director of Library Development and Networking, TSLAC, P.O. Box 12927, Austin, Texas 78711, or jpeters@tsl.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201805071
Jennifer Peters
Director
Texas State Library and Archives Commission
Filed: November 28, 2018

♦ ♦ ♦

Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 17, Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards; Chapter 18, Tobacco Settlement Permanent Trust Account; and Chapter 19, State Energy Conservation Office, pursuant to Government Code, §2001.039. The review assessed whether the reason for adopting the chapter continues to exist.

The comptroller received no comments on the proposed review, which was published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 6007).

Relating to the review of Chapter 17, the comptroller finds that the reasons for adopting Chapter 17 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §17.1 will be amended in a separate rulemaking in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 18, the comptroller finds that the reasons for adopting Chapter 18 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 19, the comptroller finds that the reasons for adopting Chapter 19 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapters 17, 18, and 19.

TRD-201805151
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 3, 2018

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Legal Banking Holidays

Notice of Legal Banking Holidays: Texas Tax Code §111.053(b) requires that, before January 1 of each year, the Texas Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. Below is the Bank Holiday Schedule for 2019. Federal Reserve Banks and branches will not be open on the dates indicated below:

January 1, New Year's Day

January 21, Martin Luther King, Jr., Day

February 18, Presidents' Day

May 27, Memorial Day

July 4, Independence Day

September 2, Labor Day

October 14, Columbus Day

November 11, Veterans Day

November 28, Thanksgiving Day

December 25, Christmas Day

TRD-201805152
Jason Frizzell
Deputy Chief Counsel, Contracts
Comptroller of Public Accounts
Filed: December 3, 2018

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/10/18 - 12/16/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/10/18 - 12/16/18 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 12/01/18 - 12/31/18 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/18 - 12/31/18 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201805190
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 4, 2018

♦ ♦ ♦

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its name was received from Texas Health Resources Credit Union, Dallas, Texas. The credit union is proposing to change its name to A New Direction Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201805085
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 29, 2018

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning the 2019-2020 Perkins Reserve Grant

Filing Date. December 5, 2018

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-19-104 is authorized by Carl D. Perkins Career and Technical Education Act of 2006, Public Law 109-270, Title I, Part C, §112(a)(1), and will be contingent on federal appropriations.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-19-104 from eligible applicants in two focus areas.

Focus Area 1: Texas Regional Pathways Network applicants must include at least three local educational agencies (LEAs), including school districts and open-enrollment charter schools, one public institution of higher education, and at least two employers in the region. LEAs and education service centers (ESCs) may serve as the fiscal agent for the grant.

Focus Area 2: Industry-Based Certifications and Testing Site/Licensed Instructor applicants can be LEAs or ESCs. LEAs and ESCs may serve as the fiscal agent for the grant. Additionally, eligible recipients must meet at least one of the following criteria: local career

and technical education (CTE) programs in rural areas; CTE programs with high numbers of CTE concentrators or participants; CTE programs with high percentages of CTE concentrators or participants; or CTE programs in areas with disparities or gaps in performance as described in the Strengthening Career and Technical Education Act of 2018, §113(b)(3)(C)(ii)(II).

Description. The purpose of the 2019-2020 Perkins Reserve Grant is to assist LEAs in (1) fostering innovation through the identification and promotion of promising and proven CTE programs, practices, and strategies that prepare individuals for non-traditional fields; and (2) promoting the development, implementation, and adoption of programs of study or career pathways aligned with state-identified high-skill, high-wage, in-demand occupations or industries. The purpose of Focus Area 1: Texas Regional Pathways Network is to assist regions with providing high-quality college and career pathways that are aligned with regional workforce needs. The purpose of Focus Area 2: Industry-Based Certifications and Testing Site/Licensed Instructor is to ensure students have the opportunity to obtain industry-based certifications.

Dates of Project. The 2019-2020 Perkins Reserve Grant will be implemented primarily during the 2019-2020 school year. Applicants should plan for a starting date of no earlier than July 1, 2019, and an ending date of no later than August 31, 2020, contingent on the continued availability of federal funding.

Project Amount. Approximately $8,420,548 is available for funding the 2019-2020 Perkins Reserve Grant program. It is anticipated that approximately 5-7 grants of no more than $700,000 each will be awarded for Focus Area 1 and 150 grants of no more than $30,000 each will be awarded for Focus Area 2. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A live webinar will be hosted on Friday, January 18, 2019. Webinar details and a registration link are included in the Program Guidelines. The webinar will be recorded and posted on the TEA Grant Opportunities web page. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA. Questions relevant to the RFA may be emailed to TEA contact persons identified in the program guidelines of the RFA no later than Friday, January 11, 2019. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be available to all potential applicants and will provide general and clarifying information about the grant program and RFA.

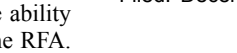
Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA no later than Thursday, January 24, 2019. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, January 29, 2019. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, February 14, 2019, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Issued in Austin, Texas, on December 5, 2018.

TRD-201805209
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 5, 2018



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 22, 2019.**

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2016-1354-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.4, 101.20(3), 116.715(a), and 122.143(4), Federal Operating Permit Number O1541, Special Terms and Conditions Number 23, Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions and a nuisance condition; PENALTY: $14,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,700; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: CENTERLINE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0966-PWS-E; IDENTIFIER: RN101439776; LOCATION: Lyons, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of the fourth quarter of 2017; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs for the fourth quarter of 2014 and the third quarter of 2016, and failing to collect lead and copper tap samples for the January 1, 2015 - December 31, 2015, monitoring period; PENALTY: $399; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Agua Dulce; DOCKET NUMBER: 2018-1080-PWS-E; IDENTIFIER: RN101276095; LOCATION: Agua Dulce, Nueces County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(1), by failing to equip the facility's elevated storage tank roof vent with a 16-mesh or finer corrosion-resistant screen to prevent entry of animals, birds, insects, and heavy air contaminants; 30 TAC §290.46(e), by failing to operate the production, treatment, and distribution facilities at the public water system at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross-connections or other potential contamination hazards exist; 30 TAC §290.46(z), by failing to create a nitrification action plan for a system distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to properly conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $350; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: City of Stockdale; DOCKET NUMBER: 2018-0956-MWD-E; IDENTIFIER: RN102916194; LOCATION: Stockdale, Wilson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010292001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $8,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: David Wallace dba Woodland Acres Property Owners Association, Jerry Harrison dba Woodland Acres Property Owners Association, and Rex Keele dba Woodland Acres Property Owners Association; DOCKET NUMBER: 2018-1158-PWS-E; IDENTIFIER: RN101271286; LOCATION: Lampasas, Lampasas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility's entry point no later than 180 days after the end of the January 1, 2015 - December 31, 2017, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at the facility's entry point and the required distribution sample site, have the samples analyzed, and report the results to the ED for the June 1, 2017 - November 30, 2017, monitoring period; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2015 - December 31, 2017, monitoring period during which the lead action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2015 - December 31, 2017, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2015 - December 31, 2017, monitoring period; PENALTY: $540; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Donal L. Brewer; DOCKET NUMBER: 2018-1610-WOC-E; IDENTIFIER: RN103344800; LOCATION: Blue Mound, Tarrant County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Fibergrate Composite Structures Incorporated; DOCKET NUMBER: 2018-0978-AIR-E; IDENTIFIER: RN100212026; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: fiberglass reinforced plastics manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20419, Special Conditions Number 17, Federal Operating Permit (FOP) Number O1182, Special Terms

and Conditions Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly pressure checks, and failing to conduct monthly visual and olfactory inspections; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1182, General Terms and Conditions, and THSC, §382.085(b), by failing to submit the deviation reports no later than 30 days after the end of each reporting period; PENALTY: $10,606; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Halyard Energy Wharton, LLC; DOCKET NUMBER: 2018-1210-AIR-E; IDENTIFIER: RN107948754; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: electricity generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3872, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Horseshoe Lodges, LLC; DOCKET NUMBER: 2018-1274-PWS-E; IDENTIFIER: RN110305471; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate (as nitrogen); PENALTY: $660; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: James A. Austin; DOCKET NUMBER: 2018-1618-WOC-E; IDENTIFIER: RN110472677; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: NEW SM, INCORPORATED dba Dry Clean Super Center; DOCKET NUMBER: 2018-0866-DCL-E; IDENTIFIER: RN102918992; LOCATION: Keller, Tarrant County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each storage area for dry cleaning waste, dry cleaning solvent, and dry cleaning wastewater; and 30 TAC §337.20(e)(6), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged; PENALTY: $5,222; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Northwest Harris County Municipal Utility District Number 15; DOCKET NUMBER: 2018-1117-MWD-E; IDENTIFIER: RN103123238; LOCATION: Tomball, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011939001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Oasis for Warriors; DOCKET NUMBER: 2018-1004-PWS-E; IDENTIFIER: RN101198604; LOCATION: Pipe Creek, Bandera County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on June 27, 2017, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected; PENALTY: $172; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: PARMAR ENTERPRISE INCORPORATED dba Time Mart; DOCKET NUMBER: 2018-0989-PST-E; IDENTIFIER: RN101202802; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,438; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: PERMANN, INCORPORATED dba Tanglewood Service Center; DOCKET NUMBER: 2018-1054-PST-E; IDENTIFIER: RN100730076; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $23,650; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Round Rock Independent School District; DOCKET NUMBER: 2018-1268-EAQ-E; IDENTIFIER: RN101121390; LOCATION: Austin, Travis County; TYPE OF FACILITY: construction project; RULES VIOLATED: 30 TAC §213.4(k) and §213.5(f)(2), and Water Pollution Abatement Plan Number 11000174, Standard Conditions Number 11, by failing to immediately suspend regulated activities in the area of a sensitive feature after discovery; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-201805182
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Combined Notice of Application and Preliminary Decision for Municipal Solid Waste Permit and Notice of Public Meeting for a New Municipal Solid Waste Transfer Station Facility: Proposed Permit No. 2398

Application and Preliminary Decision. Lealco, Inc., 7118 U.S. Highway 59 South, Goodrich, Polk County, Texas, 77335, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V Municipal Solid Waste Transfer Station permit. The facility is proposed to be located on approximately 20.5 acres of property located off County Road (CR) 130, approximately 0.8 miles northwest of the intersection of CR 130 and Chandler Road, in an unincorporated area of Williamson County, Texas, and within the extraterritorial jurisdiction of the City of Hutto, Texas. The transfer station facility would accept and transfer municipal solid waste which includes wastes resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; construction or demolition waste; special waste that does not interfere with site operations; and other wastes such as Class 2 and Class 3 industrial waste. The TCEQ received this application on August 11, 2017. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.5976&lng=-97.56&zoom=13&type=r%20. For exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hutto Public Library, 205 West Street, Hutto, Williamson County, Texas 78634. The permit application may be viewed online at http://www.scsengineers.com/State/williamson-transfer-station.

Public Comment/Public Meeting. A public meeting will be held and the comment period is extended until the end of the public meeting. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the application. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the application. The executive director will file a response to comments. A public meeting is not a contested case hearing under the Administrative Procedure Act.

The Public Meeting is to be held:

January 22, 2019 at 7:00 p.m.

Robertson Elementary School (Gynasium)

1415 Bayland Street

Round Rock, Texas 78664

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments and the Executive Director's decision on the application will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A person who may be affected by the proposed facility is entitled to request a contested case hearing from the commission.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Executive Director Action. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Mailing List. If you submit public comments, a request for a contested case hearing, or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners" Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice either electronically at <www.tceq.texas.gov/about/comments.html> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this

permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <www.tceq.texas.gov/goto/pep>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lealco, Inc. at the address stated above or by calling Mr. Chris Ruane, Region Engineering Manager at (832) 442-2204.

Issued Date: December 4, 2018

TRD-201805198
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Enforcement Orders

An agreed order was adopted regarding EnLink Midstream Services, LLC, Docket No. 2016-1635-AIR-E on December 4, 2018, assessing $510 in administrative penalties with $102 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Collin County, Docket No. 2017-0478-PST-E on December 4, 2018, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COVANCE RESEARCH PRODUCTS INC., Docket No. 2017-0662-MLM-E on December 4, 2018, assessing $5,475 in administrative penalties with $1,095 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bartlett, Docket No. 2017-1286-PWS-E on December 4, 2018, assessing $291 in administrative penalties with $58 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jeremy & Will, Inc., Docket No. 2017-1424-AIR-E on December 4, 2018, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Jo Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding David Peters, Docket No. 2017-1773-MSW-E on December 4, 2018, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding B. T. SIKES WATER WELLS, INC., Docket No. 2018-0128-WR-E on December 4, 2018, assessing $750 in administrative penalties with $150 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Erna Frac Sand, L.C., Docket No. 2018-0149-MLM-E on December 4, 2018, assessing $948 in administrative penalties with $189 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding New Sov D, LLC, Docket No. 2018-0151-MSW-E on December 4, 2018, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clay Trimble dba A.C.T. Tree Service, Docket No. 2018-0222-MSW-E on December 4, 2018, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Victoria County Water Control and Improvement District No. 1, Docket No. 2018-0315-PWS-E on December 4, 2018, assessing $224 in administrative penalties with $182 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAST RIO HONDO WATER SUPPLY CORPORATION, Docket No. 2018-0348-MWD-E on December 4, 2018, assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GLENDALE WATER SUPPLY CORPORATION, Docket No. 2018-0376-PWS-E on December 4, 2018, assessing $1,118 in administrative penalties with $223 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joe M. Stewart, Docket No. 2018-0406-WR-E on December 4, 2018, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding W.R. GRACE & CO. - CONN., Docket No. 2018-0422-PWS-E on December 4, 2018, assessing $312 in administrative penalties with $62 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH VICTORIA UTILITIES, INC., Docket No. 2018-0423-PWS-E on December 4, 2018, assessing $375 in administrative penalties with $75 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bestway, LLC dba Tommys 1, Docket No. 2018-0451-PST-E on December 4, 2018, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-0479-PWS-E on December 4, 2018, assessing $1,002 in administrative penalties with $1,002 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Eastland, Docket No. 2018-0543-PWS-E on December 4, 2018, assessing $902 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hedwig Francisca Leyendekker, Docket No. 2018-0601-AGR-E on December 4, 2018, assessing $675 in administrative penalties with $135 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPS Parking Management, LLC dba The Parking Spot, Docket No. 2018-0633-PST-E on December 4, 2018, assessing $1,338 in administrative penalties with $267 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bruceville-Eddy, Docket No. 2018-0650-PWS-E on December 4, 2018, assessing $1,722 in administrative penalties with $344 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHAMZIL ENTERPRISE INC. dba PDK Food Store, Docket No. 2018-0731-PST-E on December 4, 2018, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201805192
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Correction to Agreed Order Number 25

In the November 3, 2017, issue of the *Texas Register* (42 TexReg 6220), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 25, for Valero Refining-Texas, L.P. The error is as submitted by the commission.

The reference to penalty should be corrected to read: "$47,888".

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201805181
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of District Petition

Notice issued November 30, 2018

TCEQ Internal Control No. D-08152018-033; Headway Estates, Ltd., (Petitioner) filed a petition and an amended petition for creation of Brazoria County Municipal Utility District No. 38 (District) with the Texas Commission on Environmental Quality (TCEQ). The amended petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The amended petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 229.0403 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City Iowa Colony, Texas. By Resolution No. 2008-1, passed and adopted on January 21, 2008, the City of Iowa Colony, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The territory to be included in the proposed District is set forth in a metes and bounds description designated as Exhibit "A" and is depicted in the vicinity map designated as Exhibit "B". The amended petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the amended petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $39,600,000 ($32,560,000 for water, wastewater, and drainage plus $2,000,000 for recreation plus $5,040,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an

official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201805199
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Hearing: San Jacinto River Authority: SOAH Docket No. 582-19-1314; TCEQ Docket No. 2017-1138-WR; Application No. 13183

APPLICATION.

San Jacinto River Authority, P.O. Box 329, Conroe, Texas 77305, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §§11.042, 11.121, & 11.085 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§295.1, *et seq.*

San Jacinto River Authority seeks a Water Use Permit to authorize the use of the bed and banks of the West Fork San Jacinto River, San Jacinto River Basin to convey its surface water-based return flows actually discharged by the City of Conroe for subsequent diversion and use for municipal, industrial, agricultural, and mining purposes in its service area in Montgomery and Harris Counties.

The return flows subject to the Applicant's Water Rights Permit Application No. 13183 are surface-water based return flows, originally sourced by the Applicant to the City of Conroe pursuant to a contract (the "GRP Contract") that provided that Applicant shall remain the owner of such surface water-based return flows upon the City of Conroe's discharge of same.

San Jacinto River Authority seeks a Water Use Permit to authorize the use of the bed and banks of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin to convey up to 11,200 acre-feet per year of its surface water-based return flows authorized by Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010008002 for subsequent diversion and use for municipal, industrial, agricultural, and mining purposes in its service area in Montgomery and Harris Counties.

Applicant also seeks to authorize an exempt interbasin transfer to those portions of its service area within the Trinity-San Jacinto Coastal Basin.

Applicant indicates discharge of the return flows is authorized pursuant to TPDES Permit No. WQ0010008002 at a maximum discharge rate of 46.36 cfs (20,800 gpm) at two points located on the West Fork San Jacinto River in zip code 77345, being located at:

A. Latitude 30.271583°N, Longitude 95.496375°W, also bearing N47°W, 4,102 feet from the southwest corner of the Ransom House Survey, Abstract No. 245, in Montgomery County.

B. Latitude 30.267400°N, Longitude 95.492200°W, also bearing N 44°W, 2,112.5 feet from the southwest corner of the Ransom House Survey, Abstract No. 245, in Montgomery County.

Applicant seeks to divert anywhere between the permitted discharge points and the points authorized by Certificate of Adjudication No. 10-4964, located on the San Jacinto River, being anywhere on the perimeter of Lake Houston at Latitude 29.924300°N, Longitude 95.125300°W, in Harris and Montgomery Counties in zip codes 77301, 77302, 77303, 77304, 77384, 77385, 77386, 77365, 77338, 77339, 77345, 77346, 77532, and 77044.

Applicant seeks to divert at a maximum combined diversion rate of 155.97 cfs (70,030.53 gpm), which is authorized by, and combined with, Certificate of Adjudication No. 10-4964 and Water Use Permit No. 5809.

Applicant has provided, and the Executive Director has approved, an accounting plan (Lake Houston Reservoir Accounting Plan) that ensures that Applicant's diversions of return flows are exclusively surface water-based return flows actually discharged by the City of Conroe, originating as treated surface water supplied to the City of Conroe, pursuant to the GRP Contract.

The application and partial fees were received on February 12, 2015. Additional information and fees were received on May 11, 2015, and February 1, 2016. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 17, 2016, and amended on May 4, 2016.

The Executive Director has prepared a draft permit, which, if approved, would include special conditions, including, but not limited to, streamflow restrictions and a requirement that Applicant may only divert daily surface water based return flows that are actually discharged. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753.

CONTESTED CASE HEARING.

SOAH will conduct a preliminary hearing on this application at:

10:00 a.m. - January 7, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at http://www.tceq.texas.gov/.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: November 30, 2018

TRD-201805197
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 22, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: AALIA, INC. dba Country Corner; DOCKET NUMBER: 2018-0485-PST-E; TCEQ ID NUMBER: RN104946488; LOCATION: 108 Watterson Road, Bastrop, Bastrop County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,499; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: ALL STATE GEAR INC.; DOCKET NUMBER: 2017-1018-IHW-E; TCEQ ID NUMBER: RN109009217; LOCATION: 4717 South Zarzamora Street, San Antonio, Bexar County; TYPE OF FACILITY: wholesale automotive transmission remanufacturer, rebuilder, and parts distributor facility; RULES VIOLATED: 30 TAC §335.2(a), by causing, suffering, allowing, or permitting the unauthorized storage, processing, or disposal of industrial solid waste; and 40 Code of Federal Regulations §262.11, 30 TAC §§335.62, 335.503(a), 335.504, 335.511, and 335.513, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: $20,250; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Avnoor Mahi, LLC; DOCKET NUMBER: 2016-1595-MWD-E; TCEQ ID NUMBER: RN103759106; LOCATION: 11978 United States Highway 59 North, Livingston, Polk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015087001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0015087001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports at the intervals specified in the permit; and 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0015087001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2015; PENALTY: $10,875; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: CIRCLE K STORES INC. dba Circle K 2706187; DOCKET NUMBER: 2017-1729-PST-E; TCEQ ID NUMBER: RN101551307; LOCATION: 1310 South Buckner Boulevard, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: $15,101; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth

Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Daniel Williams; DOCKET NUMBER: 2017-1177-WR-E; TCEQ ID NUMBER: RN108461914; LOCATION: 5196 Lindgreen Road, Corpus Christi, Nueces County; TYPE OF FACILITY: real property; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $1,500; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Eastman Chemical Texas City, Inc.; DOCKET NUMBER: 2017-1520-AIR-E; TCEQ ID NUMBER: RN100212620; LOCATION: 201 Bay Street South, Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §111.111(a)(1)(F)(ii) and §122.143(4), and Federal Operating Permit Number O1938, General Terms and Conditions and Special Terms and Conditions Number 3.A.(iv)(1), by failing to perform quarterly visible emissions observations of stationary vents from emission units in operation; PENALTY: $43,025; Supplemental Environmental Project offset amount of $21,512 applied to *Texas City Independent School District Alternative Fuel School Bus Program*; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: JAI JAWAN JAI KISSAN, INC.; DOCKET NUMBER: 2016-2138-PST-E; TCEQ ID NUMBER: RN102265477; LOCATION: 6690 West Airport Boulevard, Houston, Harris County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or addition of information regarding the underground storage tank (UST) system within 30 days from the date of occurrence of change or addition; 30 TAC §334.55(a)(6), by failing to determine whether or not any prior release of a stored regulated substance had occurred from the system, as part of the required procedure for the permanent removal of the UST system; and 30 TAC §334.55(b)(6), by failing to develop and maintain a permanent record regarding the permanently removed UST system; PENALTY: $5,250; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Karim S. Karedia dba QS 346; DOCKET NUMBER: 2017-0746-PST-E; TCEQ ID NUMBER: RN104212014; LOCATION: 8558 Huebner Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $8,250; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: RATCLIFF WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0085-PWS-E; TCEQ ID NUMBER: RN101222339; LOCATION: one block south of State Highway 71 North, Ratcliff, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with the certification that the consumer notification had been distributed; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information on the CCR is correct and consistent with the compliance monitoring data; 30 TAC §290.272 and §290.274(a) and (c), by failing to meet the adequacy, availability, and/or content requirement for the CCR; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report to the ED, and regarding the failure to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11337; PENALTY: $407; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: ST Fuel Inc; DOCKET NUMBER: 2018-0180-PST-E; TCEQ ID NUMBER: RN102391000; LOCATION: 622 North Main Street, Springtown, Parker County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to conduct the annual testing of the Stage I equipment; PENALTY: $1,639; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201805183
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill: Proposed Permit No. 62035

APPLICATION AND PRELIMINARY DECISION. Lealco, Inc., 7118 U.S. Highway 59 South, Goodrich, Polk County, Texas, 77335, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V Municipal Solid Waste Transfer Station permit. The facility is proposed to be located on approximately 20.5 acres of property located off County Road (CR) 130, approximately 0.8 miles northwest of the intersection of CR 130 and Chandler Road, in an unincorporated area of Williamson County, Texas, and within the extraterritorial jurisdiction of the City of Hutto, Texas. The transfer station facility would accept and transfer municipal solid waste which includes wastes resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; construction or demolition waste; special waste that does not interfere with site operations; and other wastes such as Class 2 and Class 3 industrial waste. The TCEQ received this application on August 11, 2017. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/in-

dex.html?lat=30.5976&lng=-97.56&zoom=13&type=r%20. For exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Hutto Public Library, 205 West Street, Hutto, Williamson County, Texas 78634. The permit application may be viewed online at http://www.scsengineers.com/State/williamson-transfer-station.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and the comment period is extended until the end of the public meeting. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the application. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the application. The executive director will file a response to comments. A public meeting is not a contested case hearing under the Administrative Procedure Act.

The Public Meeting is to be held:

January 22, 2019, at 7:00 p.m.

Robertson Elementary School (Gynasium)

1415 Bayland Street

Round Rock, Texas 78664

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments and the Executive Director's decision on the application will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A person who may be affected by the proposed facility is entitled to request a contested case hearing from the commission.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement " [I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing, or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice either electronically at <www.tceq.texas.gov/about/comments.html> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <www.tceq.texas.gov/goto/pep>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lealco, Inc. at the address stated above or by calling Mr. Chris Ruane, Region Engineering Manager at (832) 442-2204.

Issued Date: December 4, 2018

TRD-201805194
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 235C

Application. City of Kingsville, P.O. Box 1458, Kingsville, Kleberg County, Texas 78364, the owner and operator of the City of Kingsville Landfill, a municipal solid waste (MSW) facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize a horizontal and vertical expansion at the existing permitted landfill. The facility is located at 1.7 miles southeast of the City of Kingsville at the northeast corner of the intersection of FM 2619 and County Road E 2130, Kingsville, in Kleberg County, Texas 78363. The TCEQ received this application on September 19, 2018. The permit application is available for viewing and copying at the City of Kingsville, City Hall, 400 W. King Avenue, Kingsville, Kleberg County, Texas 78363, and may be viewed online at http://www.cityofkingsville.com/departments/public-works/landfill/landfill-amendment-application/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.445277&lng=- 97.815833&zoom=13&type=r. For exact location, refer to application.

The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *<www.tceq.texas.gov/goto/cid>*. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *<www14.tceq.texas.gov/epic/eComment/>* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *<www.tceq.texas.gov/goto/pep>*. Si desea información en español, puede llamar al (800) 687- 4040.

Further information may also be obtained from City of Kingsville at the address stated above or by calling Mr. Scot Collins, P.G., Project Manager at (361) 814-9900.

TRD-201805195
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Notice of Water Quality Application

The following notices were issued on November 15, 2018, through November 28, 2018.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001333000 issued to INEOS USA LLC, which operates the Chocolate Bayou Plant, a facility that manufactures and ships olefins and polypropylene, to authorize the change of boron and fluoride sample type from composite to grab at Outfall 002, and removal of the daily average Report requirement for boron and fluoride at Outfalls 001 and 002. The existing permit authorizes the discharge of treated process wastewater (including remediation and spill clean-up wastewaters), previously monitored effluent (treated sanitary wastewater), utility wastewater, and stormwater at a daily average flow not to exceed 8,000,000 gallons per day via Outfall 001; commingled low-volume wastewater, secondary flush process area stormwater, fire system flush water, condenser condensate, stormwater, and hydrostatic test water on an intermittent and flow-variable basis via Outfall 002; and stormwater on an intermittent and flow-variable basis via Outfalls 003, 004, and 005. The facility is located on the north side of Farm-to-Market Road (FM) 2004, approximately two miles south of the intersection of FM 2917 and FM 2004, in Brazoria County, Texas 77511.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015018001 to change the measurement frequency of flow self-monitoring from Continuous to Instantaneous, to indicate that the Instantaneous Measurement Frequency is required only during discharge events, to change the Sample Type of flow self-monitoring from Totalizing Meter to Estimated, to indicate that an Estimated Sample Type is required only during discharge events; to add When Discharging to item number 2 to clarify that the pH limits are only applicable during discharge events; and to change Device to Method in the definition of Instantaneous flow on page 3, item 1.d. to clarify that a meter or some other device is not required to estimate flows from emergency discharges. The existing permit authorizes the discharge of raw river water overflow, treated water overflow and treated filter backwash and water treatment plant sludge lagoon decant water from a water treatment plant at a daily average flow not to exceed 1,250,000 gallons per day from Outfall 001, not to exceed 1,250,000 gallons per day from Outfall 002 and 600,000 gallons per day from Outfall 003. The facility is located at 18015 County Road 329, Terrell in Kaufman County, Texas 75161.

NORTH TEXAS MUNICIPAL WATER DISTRICT, P.O. Box 2408, Wylie, Texas 75098, has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015278001 to change the measurement frequency of flow self-monitoring from Continuous to Instantaneous; to indicate that the Instantaneous Measurement Frequency is required only during discharge event; to change the Sample Type of flow self-monitoring from Totalizing Meter to Estimated; to indicate that an Estimated sample type is required only during discharge events; to add When Discharging to item 2 to clarify that the pH limits are only applicable during discharge event; and to change Device to Method in the definition of Instantaneous flow on page 3, item 1.d. to clarify that a meter or some other device is not required to estimate flows from emergency discharges. The existing permit authorizes the discharge of authorizes the discharge of wastes from a water treatment plant at a daily average flow not to exceed 500,000 gallons per day.

The facility is located at 2073 Farm-to-Market Road 273 in Fannin County, Texas 75418.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201805193
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Revised Notice of Public Meeting (Revised to change the date of the public meeting): Proposed Air Quality Permit Number 149092

APPLICATION. Capital Ready Mix LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Air Quality Permit Number 149092, which would authorize construction of a Concrete Batch Plant located at 13133 South Wayside Drive, Houston, Harris County, Texas 77048. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.61889&lng=-95.31722&zoom=13&type=r. The facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on October 24, 2017.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Wednesday, December 12, 2018, at 7:00 p.m.

Exclusive Palace Reception Hall

6811 Bellfort Street

Houston, Texas 77087

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

The application will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Johnson Neighborhood Library, 3517 Reed Road, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Capital Ready Mix LLC, 514 Forest Oaks Drive, Houston, Texas 77017-4937 or by calling Mr. Venkata Godasi, AARC Environmental, Inc., at (713) 974-2272.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: November 30, 2018

TRD-201805200
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Revised Notice of Public Meeting (To change the date of the public meeting) on an Application to Amend a Certificate of Adjudication: Application No. 18-2020A

APPLICATION. Curtis J. Wheatcraft and Christina Wheatcraft (applicant) seek to amend their portion of Certificate of Adjudication No. 18-2020 to add mining use, and add two diversion points on the Guadalupe River, Guadalupe River Basin in Kerr County.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, installing a measuring device at the diversion points. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, Texas 78753.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the permit application and the Executive Director's recommendations, but the comments and questions submitted orally during the Informal Discussion Period will not be considered by the Commissioners and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. The Executive Director will subsequently summarize the formal comments and prepare a written response which will be considered by the Commissioners before they reach a decision on the application. The Executive Director's written response will be available to the public online or upon request. The public comment period on this application concludes at the close of the public meeting.

The Public Meeting is to be held:

Thursday, January 10, 2019, at 7:00 p.m.

Center Point Elementary School (Cafeteria)

215 China Street

Center Point, Texas 78010

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting. Citizens may mail their comments to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or submit them electronically at http://www14.tceq.texas.gov/epic/eComment/ before the public comment period closes, which is at the close of the public meeting. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information about the application may also be obtained by calling Lori Hamilton, Manager, TCEQ Water Availability Division, Water Rights Permitting and Availability Section, at (512) 239-4691.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: December 4, 2018

TRD-201805196
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Monthly Report due July 5, 2018, for Committees

Daniel J. Kramer, Leander Firefighters for Responsible Government, 310 Leather Oak Loop, San Marcos, Texas 78666

Deana Everett Tollerton, Williamson County Young Democrats, 13224 Marrero Drive, Austin, Texas 78729

Douglas L. Varner, CDM Smith PAC, 11490 Westheimer Road, Suite 700, Houston, Texas 77077

Deadline: Monthly Report due August 6, 2018, for Committees

Deana Everett Tollerton, Williamson County Young Democrats, 13224 Marrero Drive, Austin, Texas 78729

Douglas L. Varner, CDM Smith PAC, 11490 Westheimer Road, Suite 700, Houston, Texas 77077

Anthony Heath Wester, Grand Prairie Police Association PAC, P.O. Box 531184, Grand Prairie, Texas 75053

TRD-201805081
Seana Willing
Executive Director
Texas Ethics Commission
Filed: November 29, 2018

♦ ♦ ♦

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 12, 2018, to November 30, 2018. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 7, 2018. The public comment period for this project will close at 5:00 p.m. on Sunday, January 6, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: GT Logistics

Location: The project site is upriver of the intersection of the Port Arthur Canal and the Gulf Intracoastal Waterway (GIWW), at 2350 South Gulfway, in Port Arthur, Jefferson County, Texas

Latitude & Longitude (NAD 83): 29.832072 -93.964733

Project Description: The applicant proposes to modify the previously-permitted Dock 2 area. The new dock would consist of a new 90-foot-long by 50-foot-wide loading platform. A new 15-foot-square gangway platform, a new dockhouse platform, 6 monopile breasting dolphins, 4 new barge monopile dolphins, 300 linear feet of sheet pile bulkheading, and a shoreline revetment mattress. The applicant also proposes to dredge 470,000 cubic yards to a depth of -42 feet (MLT). Dredged material would be placed in Placement Areas (DMPAs) number 8, 9A, 9B, and/or 11.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2011-01232. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1093-F1

Applicant: Sunoco Partners Marketing & Terminals L.P.

Location: The project site is located approximately 8.5 miles southeast of the city of Beaumont, Texas within the Neches River in Jefferson County, Texas

Latitude & Longitude (NAD 83): 30.01687 -93.99425

Project Description: The applicant proposes to modify the permit issued on April 1, 2015, and expires on December 21, 2020, to extend the time for an additional 10 years for maintenance dredging within the previously authorized dredge area and to conduct new mechanical or hydraulic dredging within a proposed turning basin. The current active permit authorized the applicant to dredge approximately 590,000 cubic yards of material, construct a 60-foot-wide by 100-foot-long pile-supported dock with 4 ship-breasting-dolphins with walkways, 6 on-shore mooring dolphins, and approximately 1,300 linear feet of articulated concrete block for shoreline stabilization. Disposal Areas 25, 24, 22, 21, 18, and/or proposed Disposal Area 23 were authorized for effluent discharge of return water. This permit also authorized the applicant to discharge approximately 13,000 cubic yards of fill material into 7.77 acres of wetlands adjacent to the Neches River in order to construct a 160-linear foot driveway, access road, on-shore foundations, and containment areas.

The inclusion of this turning basin, in addition to the previously approved dredging area, will allow vessels to safely turn around and reverse their direction of travel in order to moor at the existing Sunoco Dock facility. The following new work is proposed: dredge a new cut of 710,000 cubic yards to -40 feet MLLW plus 2 foot overdraft for a new 24 acre turning area; remove an estimated 60,000 to 70,000 cubic yards per dredging cycle; conduct yearly dredging maintenance; and utilize previously authorized Disposal Areas 25, 24, 22, 21, 18, and/or proposed Disposal Area 23 for effluent discharge of return water.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2014-00131. This application will be reviewed pursuant Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1095-F1

Applicant: City of Portland

Location: The project is located on the shoreline of Nueces Bay northeast of Indian Point along the Nueces Bay Causeway's southbound frontage road, in Portland, San Patricio County

Latitude & Longitude (NAD 83): 27.857842, -97.353189

Project Description: The applicant proposes to construct a 60-foot by 30-foot boat ramp and dredge approximately 80 cubic yards (CY) that will be hauled away and placed within an upland area. The proposed project will consist of the placement of 170 CY of fill material, for the 60-foot by 30-foot boat ramp, below mean lower low water (MLLW) and total permanent impacts of 0.03 acre to Section 10 waters. The applicant proposes to construct an 8-foot by 12-foot covered fish cleaning station and 2 elevated, 5-foot wide L-shaped walkways on each side of the boat ramp. Elevated walkways will extend approximately 40 linear feet (LF) from the parking area and the southern walkway extending approximately 75 LF to the south and the northern walkway extending 45 LF to the north.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00792. This application will be reviewed

pursuant Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1100-F1

Applicant: City of Port Aransas

Location: approximately 72.16-acre project site is located in and adjacent to the Corpus Christi Ship Channel within an area known as Charlie's Pasture in Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.835804, -97076960

Project Description: The applicant proposes to construct an approximate 56.42-acre marina adjacent to the Port Aransas Nature Preserve at Charlie's Pasture. To initiate construction of the project, sheet pilings and batter pilings will be driven along each side of the 220-foot-wide entrance channel to create the marina jetties. This phase of the project is anticipated to take approximately 4 to 6 months to complete. The next phase of the project will consist of excavating/mechanical dredging the approximate 16.80-acre marina basin to a depth of 8 to 10 feet below mean lower low water (MLLW), which will result in 265,000 cubic yards of material. The approximately 5,782.61 feet of bulkhead associated with the project will also be constructed at this time. Excavated dredge from the marina will be placed and contained within the 37.25-acre on-site dredge material placement area. This phase of the project is anticipated to take approximately 4 to 6 months to complete. Once the marina is excavated the next phase of the project will involve hydraulically dredging approximately 36,000 cubic yards of material (2.34 acres) from deep and shallow water habitats present within the entrance channel between the jetties to a depth of 11 feet below MLLW. Dredged material associated with construction of the entrance channel will also be placed within the on-site dredge material placement area. This phase of the project is anticipated to take approximately 3 to 5 months to complete.

To minimize offsite sediment flow, a temporary dike will be constructed around the perimeter of the bulkhead and silt fence will be placed around the perimeter of the dredge material placement area for the life of the project until permanent stabilization is achieved. The purpose of both erosion and sedimentation control devices is to contain dredge material to the project footprint and reduce sediment flow into the Corpus Christi Ship Channel. Additionally, a water outlet weir will be installed to allow excess water to drain offsite. The weir will be adjusted to prevent runoff from exceeding 300 milligrams/liter for total suspended solids.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2000-02968. This application will be reviewed pursuant Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1101-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201805191
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: December 4, 2018

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Office of the Governor

Notice of Available Funding Opportunities

Office of the Governor, Public Safety Office (PSO)

The Criminal Justice Division (CJD), located in the PSO, is announcing the following funding opportunities for State Fiscal Year 2020. Details for each opportunity, including the open and close date for the solicitations, can be found on the eGrants Calendar (https://eGrants.gov.texas.gov/fundopp.aspx).

- Campus Victim Assistance Program - The purpose of this announcement is to solicit programs that build a culture for victim services on Texas campuses that centers on readily meeting victims with empathy and support to quicken their recovery process. This solicitation is designed to improve access to, and enhance/expand the services for students on both college and K-12 educational campuses who have experienced a crime.

- Crime Stoppers Assistance Fund - The purpose of this announcement is to strategically support, expand, and fund local certified Texas Crime Stoppers organizations that help protect our communities.

- Criminal Justice Program - The purpose of this announcement is to solicit applications for projects that promote public safety, reduce crime, and improve the criminal justice system.

- First Responder Mental Health Grant Program - The purpose of this announcement is to solicit programs that provide services and assistance directly to peace officers and first responders to address direct and indirect trauma that occurs in the course of their normal duties either as the result of the commission of crimes by other persons or in the response to an emergency.

- General Victim Assistance Program - The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process.

- Juvenile Justice Grant Program - The purpose of this announcement is to solicit applications for projects that prevent violence in and around schools; and to improve the juvenile justice system and develop effective education, training, prevention, diversion, treatment, and rehabilitation programs.

- Long-Term Housing Victim Assistance Program - The purpose of this announcement is to solicit projects that focus on a victim-centered, trauma-informed approach to providing transitional housing services that improve the well-being and stability of survivors of domestic violence, sexual assault, dating violence, stalking, and/or human trafficking.

- Preventing, Investigating, and Prosecuting the Commercial Exploitation of Children - The purpose of this announcement is to solicit applications for projects that prevent, investigate, and/or prosecute the commercial sexual exploitation of children in Texas.

- Residential and Community-Based Services for Victims of Commercial Sexual Exploitation of Children - The purpose of this announcement is to solicit for programs that recover victims of Commercial Sexual Exploitation of Children (CSEC) through collaborative efforts spanning multiple systems and to restore survivors of CSEC through immediate and long-term services and supports they need to heal and thrive.

- Residential Substance Abuse Treatment (RSAT) Program - The purpose of this announcement is to support development and implementation of residential substance abuse treatment programs within correctional and detention facilities in which prisoners are incarcerated for a

period of time sufficient to permit substance abuse treatment and after-care programs for those prisoners.

- Rifle-Resistant Body Armor Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with rifle-resistant body armor.

- Specialty Courts Program - The purpose of this announcement is to solicit applications for specialty court programs as defined in Chapters 121 through 129 of the Texas Government Code.

- Texas Anti-Gang (TAG) Program - The purpose of this announcement is to solicit applications for preselected projects that support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities.

- Texas Conversion to the National Incident-Based Reporting System (NIBRS) - The purpose of this announcement is to solicit applications for projects that enable local law enforcement agencies to upgrade their technology infrastructure to allow for and support the submission of data to the Uniform Crime Reporting (UCR) National Incident-Based Reporting System (NIBRS).

- Truancy Prevention and Intervention Program - The purpose of this announcement is to solicit applications for projects that provide truancy prevention and intervention services.

- Violence Against Women Justice and Training Program - The purpose of the announcement is to solicit applications for projects that promote a coordinated, multi-disciplinary approach to improve the justice systems.

The Homeland Security Grants Division (HSGD), located in the PSO, is announcing the following funding opportunities for State Fiscal Year 2020. Details for each opportunity, including the open and close date for the solicitations, can be found on the eGrants Calendar (https://eGrants.gov.texas.gov/fundopp.aspx).

- State Homeland Security Program (SHSP) - Law Enforcement Terrorism Prevention Activities (LETPA) - The purpose of this solicitation is to support state, tribal and local preparedness activities that continue to build law enforcement capabilities to prevent terrorist attacks and provide law enforcement and public safety communities with funds to support critical prevention and protection activities.

- State Homeland Security Program (SHSP) - Regular Projects - The purpose of this solicitation is to support state, tribal and local preparedness activities that address high-priority preparedness gaps across all core capabilities where a nexus to terrorism exists.

TRD-201805205
Aimee Snoddy
PSO Executive Director
Office of the Governor
Filed: December 5, 2018

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Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission submitted proposed amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs, §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures, §355.112, concerning Attendant Compensation Rate Enhancement, and §355.306, concerning Cost Finding Methodology, which were published in the proposed rules section of the October 19, 2018, issue of the *Texas Register* (43 TexReg 6911). Due to a publication error made by the *Texas Register,* the text of what should have been §355.112(h)(2)(B), was inadvertently deleted. The text of old subparagraph §355.112(h)(2)(C) should have remained unchanged and become the text for §355.112(h)(2)(B).

On page 6915, §355.112(h)(2)(B) and (C) read as follows:

(B) [~~For ICF/IID, HCS, and TxHmL programs, providers must submit an Attendant Compensation Report for odd years beginning with the rate year that starts September 1, 2017. The report must reflect the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. The report is due to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the Attendant Compensation Report forms, whichever due date is later.~~]

[~~(C) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection(s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.~~]

It should read as follows:

(B) [~~For ICF/IID, HCS, and TxHmL programs, providers must submit an Attendant Compensation Report for odd years beginning with the rate year that starts September 1, 2017. The report must reflect the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. The report is due to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the Attendant Compensation Report forms, whichever due date is later.~~]

[~~(C)~~] When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection(s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

TRD-201805169

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State Independent Living Council

Request for Proposal

Texas State Independent Living Council (SILC) is a nonprofit organization that assists Texans with a disability to live as independently as they choose. Texas SILC is federally authorized by the Rehabilitation Act of 1973 and Workforce Innovation Act of 2014 and develops the State Plan for Independent Living (SPIL) that serves as a strategic plan to employ Independent Living Services.

Texas SILC has partnered with the Administration for Community Living (ACL) to provide quality of life grants over the next three years to community-based disability organizations serving people living with

paralysis. For the purposes of this grant, the definition of paralysis refers to a range of disabling conditions due to stroke, spinal cord injury, multiple sclerosis, cerebral palsy or any central nervous system disorders that results in difficulty or the inability to move the upper or lower extremities. The goal of this pilot is to increase supports and services for Texans living with paralysis in rural and underserved areas of the State that will improve the opportunity to become more independent and integrated in the community of their choice.

Texas SILC is not a direct service provider and relies on community partners to provide direct services and supports for Texans with disabilities and fulfill the goals and objectives of the SPIL. Texas SILC has procured a telehealth- type platform (e.g. Zoom platform) and is searching for community-based organizations to provide virtual Independent Living Services to Texans living with paralysis in unserved or underserved areas of the State. More information about the project may be viewed on the Texas SILC's *Virtual Independent Living Services* project webpage at: https://www.txsilc.org/projects/vils.html

The*Virtual Independent Living Services* project will provide Texas community based organizations, with vested interest in serving people living with paralysis, the virtual platform to provide independent living services and supports. The virtual platform will provide Texans living with paralysis access to a secure, HIPPA compliant platform, to receive services and supports.

Individuals will be able to access this platform through a smart-phone application, tablet, computer, or by telephone. The goal of the virtual services platform is to bring services to hundreds of individuals living with paralysis that would have not otherwise been able to access Independent Living Services due to lack of transportation, accessible housing, and personal care attendant support. This platform should also provide social interaction and support for people with paralysis who might be living with depression or other mental health issues. The virtual platform should offer greater access to independent living services to individuals and strengthen their network of peers and mentors.

Specific examples of services that may be provided through virtual platform to Texans living with paralysis in unserved or underserved areas includes but are not limited to: peer support; employment and career development training; personal care attendant management; money management and personal finance; healthy eating and adaptive fitness exercises; civic engagement in and out of institutions, state-facilities, and nursing homes; assistive technology and the use of applications to assist in daily living activities and at work; travel support and training; leadership and development; self and systems advocacy methods; accessible housing and transportation options and rights; resources for parents with disabilities; support groups and discussion topics for caregivers and family members; service animal options and rights; and a host of other topics impacting Texans living with paralysis.

Awarded organizations selected through this request for proposal (RFP) will be required to use and gain competence in the telehealth-type platform to be provided. The specifics of training and proficiency expectations will be discussed and agreed to prior to award.

As part of the grant partnership, Texas SILC is committed to providing technical assistance and training on the tele-health platform. Texas SILC will provide each awarded organization a toolkit that explains in detail what both awarded organizations and participating Texans will need to know to effectively use and leverage the technology. The toolkit will include outreach materials, instructional videos, and troubleshooting support.

The Texas SILC is accepting proposals from community-based organizations that serve people living with paralysis to employ a virtual Independent Living Services to Texans with paralysis. Proposals can be submitted until 5:00p.m. Central Standard Time, Tuesday, January 22, 2019, via email to VILS@txsilc.org.

Up to five community-based disability organizations will receive up to $40,000 each to provide virtual Independent Living Services to Texans living with paralysis. All funds must be used in accordance to applicable federal laws and regulations.

An independent review panel will review all applications and make a recommendation for awards to the Texas SILC. Texas SILC will announce awards by 5:00p.m. Central Standard Time, Friday, February 1, 2019.

Project services must start Monday, February 11, 2019, and must be concluded by November 30, 2019. Awardees must report performance and financial data that measure the impact and effectiveness of the award by December 31, 2019.

Texas SILC requests community partners willing to participate in the *Virtual Independent Living Services* project to complete a proposal that ensures the following project objectives and outcomes are achieved.

Project outcomes include:

Texans with paralysis who live in unserved or underserved areas or represent an underserved population will have greater access to Independent Living Services in the environment they choose;

Texans with paralysis will experience decreased isolation and will better connect with peers.

The project will increase coalitions between community-based organizations that provide supports and services to Texans with paralysis;

Texans with disabilities will have enhanced employment opportunities and have more strategies to thrive in the community of their choice.

Applicants interested in participating as a direct service provider in the project must submit a proposal that is no more than five single-spaced pages in Verdana 12-point font in Microsoft Word and respond to the following items:

1. Organization Background: please provide the name of your organization, organization address, Tax ID Number, name of contact person and contact information.

2. Narrative Description of the Project: please provide a narrative description of the type of virtual independent living services your organization plans to provide; milestones; how it will achieve project goals, objectives, and outcomes; and the data your organization will collect and report on that measures the impact and effectiveness of the award (e.g. Number of Texans living with paralysis who received an Independent Living Service). In this section, please include the purpose and scope of the project; location of work; describe the need for the project and solutions; deliverables that will be scheduled; and a timeline. Additional preference will be made for those community- based organizations that describe how the services are targeted to those populations listed in Section 3.2 of the SPIL. The SPIL may be viewed at the Texas SILC's website: www.txsilc.org

3. Capacity: please provide an overview of your organization, leadership and staff expertise, organizational ability to provide financial management and performance reporting. Please also provide a budget and budget justification for the project; type of payment schedule preferred (e.g. monthly; quarterly); and if and how the awarded funds will be used for travel.

Respondents are encouraged to provide as much detail in their proposals as possible regarding their community-based services in order to allow the independent review panel and the Texas SILC to accurately

assess the best possible candidates. This is particularly valuable given the range of possible services responsive to this RFP.

Awarded organizations who receive an award up to $40,000 grant under this RFP will not be considered for subsequent awards under this grant.

This grant was supported in part by grant number 90PRRC0002 from The United States Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their feeling and conclusions. Points of view or opinions do not, however, represent official Administration for Community Living policy.

Questions about this request for proposal must be submitted in writing via email to VILS@txsilc.org by 5:00p.m. Central Standard Time, Friday, December 21, 2018. All answers will be subsequently published on Texas SILC's *Virtual Independent Living Services* project webpage: https://www.txsilc.org/projects/vils.html

Texas SILC looks forward to developing new partnerships to increase supports and services for Texans living with paralysis living in underserved or unserved areas of the State. Additional *Virtual Independent Living Services* project funding opportunities may be available in the Summer of 2019.

TRD-201805180
Brian White
General Counsel/Project Director
State Independent Living Council
Filed: December 3, 2018

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Texas Department of Insurance, Division of Workers' Compensation

FY 2019 Research and Evaluation Group Research Agenda

General remarks and official action taken:

The commissioner of workers' compensation considers the proposed Fiscal Year (FY) 2019 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance, Division of Workers' Compensation (DWC).

Texas Labor Code §405.0026 requires the commissioner of insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance (TDI). Labor Code §405.0025 requires the REG to conduct professional studies and research related to the delivery of benefits; litigation and controversy related to workers' compensation; insurance rates and ratemaking procedures; rehabilitation and reemployment of injured employees; the quality and cost of medical benefits; employer participation in the workers' compensation system; employment health and safety issues; and other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system. Texas Insurance Code §1305.502 requires the REG to develop and issue an annual informational report card that identifies and compares, on an objective basis, the quality, costs, health care provider availability, and other analogous factors of the workers' compensation system of this state with each other and with medical care provided outside of networks.

Labor Code §405.0026 requires the REG to prepare and publish annually in the *Texas Register* a proposed workers' compensation research agenda for the commissioner's review and approval.

On January 9, 2017, the commissioner of insurance delegated the functions of the REG to the commissioner of workers' compensation.

In August 2018, the REG posted on the TDI website an informal request for stakeholders and the public to provide input on a suggested FY 2019 research agenda. The REG also requested input from legislative offices. The REG received no responses.

DWC published the proposed research agenda in the September 28, 2018, issue of the *Texas Register* (43 TexReg 6497) for public review and comment. DWC received no requests for hearing. DWC received one comment.

Comment:

A commenter suggested that diagnosis codes and return-to-work data be included in the telemedicine study. The commenter wrote that diagnosis codes will show which medical problems are being handled by telemedicine, including mental health claims through telemedicine visits.

DWC Response:

DWC appreciates the comment and will consider available data and methodology to address those suggestions when developing the telemedicine study plan.

The commissioner of workers' compensation adopts the following FY 2019 Research Agenda for the Workers' Compensation Research and Evaluation Group:

1. Completion and publication of the thirteenth edition of the Workers' Compensation Health Care Network Report Card (required in 2019 under Insurance Code §1305.502(a)-(d) and Labor Code §405.0025(b)).

2. An update of return-to-work outcomes for injured employees in the Texas workers' compensation system (Labor Code §405.0025(a)(4)).

3. An annual update of medical costs and utilization in the Texas workers' compensation system, including an analysis on the impact of the Texas pharmacy closed formulary on compounded drugs (Labor Code §405.0025(a)(5)).

4. A baseline evaluation of medical services provided through telemedicine in the Texas workers' compensation system, including medical utilization and costs of Medicare-approved services (Labor Code §405.0025(a)(5)).

The commissioner of workers' compensation approves and adopts the FY 2019 Research Agenda for the Workers' Compensation Research and Evaluation Group, as specified above, effective immediately.

TRD-201805201
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 4, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2108 "Money Multiplier"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2108 is "MONEY MULTIPLIER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2108 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2108.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, $$ SYMBOL, $2.00, $4.00, $5.00, $6.00, $10.00, $20.00, $40.00, $50.00, $100, $500 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2108 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
$$ SYMBOL	WINX2
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$6.00	SIX$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$30,000	30TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2108), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2108-0000001-001.

H. Pack - A Pack of the "MONEY MULTIPLIER" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MONEY MULTIPLIER" Scratch Ticket Game No. 2108.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY MULTIPLIER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 28 (twenty-eight) Play Symbols. Each time a YOUR LUCKY NUMBER Play Symbol is revealed within a GAME, a player wins the PRIZE for that GAME. If the player reveals a "$$" Play Symbol in any GAME, the player wins DOUBLE the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 28 (twenty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 28 (twenty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 28 (twenty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 28 (twenty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. On winning and Non-Winning Tickets, the top cash prize of $30,000 will appear at least once, unless restricted by other parameters, play action or prize structure.

D. A Ticket can win up to twenty-one (21) times.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

G. Across GAME 1- GAME 6, all non-winning Play Symbols will be different.

H. Play Symbols will never equal the corresponding Prize Symbol (i.e., 2 and $2, 4 and $4, 5 and $5, 6 and $6, 10 and $10, 20 and $20, 40 and $40 or 50 and $50).

I. On Non-Winning Tickets, the YOUR LUCKY NUMBER Play Symbol will never appear in any GAME.

J. When reading the twenty-one (21) Play Symbols from top to bottom and column by column starting with GAME 1 and ending with GAME 6 (i.e., the GAME 1 Play Symbol, to the GAME 2 top Play Symbol, to the GAME 2 bottom Play Symbol, to the GAME 3 top Play Symbol etc. and ending with the bottom GAME 6 Play Symbol), the Play Symbols

will never appear in an ascending or descending order over the entire list of Play Symbols on the Ticket.

K. When reading the twenty-one (21) Play Symbols from left to right and row by row starting with GAME 6 (i.e., the GAME 6 top Play Symbol, to the GAME 5 top Play Symbol, to the GAME 6 second from the top Play Symbol, to the GAME 4 top Play Symbol, to the GAME 5 second from the top Play Symbol, to the GAME 6 third from the top Play Symbol, etc. and ending with the bottom GAME 6 Play Symbol), the Play Symbols will never appear in an ascending or descending order over the entire list of Play Symbols on the Ticket.

L. Regarding Play Symbols, all Tickets will contain the following:

GAME 1 - one (1) Play Symbol

GAME 2 - two (2) Play Symbols

GAME 3 - three (3) Play Symbols

GAME 4 - four (4) Play Symbols

GAME 5 - five (5) Play Symbols

GAME 6 - six (6) Play Symbols

M. If a GAME wins with the "Double Dollar" (WINX2) Play Symbol, the YOUR LUCKY NUMBER Play Symbol will not appear in the same GAME.

N. The "Double Dollar" (WINX2) Play Symbol will win DOUBLE the PRIZE for that GAME.

O. The "Double Dollar" (WINX2) Play Symbol will never appear more than two (2) times on a Ticket.

P. The "Double Dollar" (WINX2) Play Symbol will never appear more than one (1) time per GAME.

Q. The "Double Dollar" (WINX2) Play Symbol will never appear on Non-Winning Tickets.

R. The "Double Dollar" (WINX2) Play Symbol will never appear as the YOUR LUCKY NUMBER Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $6.00, $10.00, $20.00, $40.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MULTIPLIER" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes

available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2108. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2108 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	777,600	9.26
$4	432,000	16.67
$5	115,200	62.50
$6	124,800	57.69
$10	124,800	57.69
$20	96,000	75.00
$40	12,000	600.00
$100	8,640	833.33
$500	120	60,000.00
$30,000	6	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2108 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2108, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201805186
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 4, 2018

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 28, 2018, for an amendment to a certificate of convenience and necessity (CCN) for a proposed transmission line in Andrews County.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend its Certificate of Convenience and Necessity for the Clearfork to Dog House 345-kilovolt (kV) Transmission Line in Andrews County, Docket Number 48861.

The Application: Sharyland Utilities, L.P. filed an application on November 28, 2018, for approval to amend its certificate of convenience and necessity to construct a single circuit 345-kV transmission line located in Andrews County. The transmission line will be constructed primarily on monopole structures. The proposed single route option is approximately 10.3 miles in length and the estimated costs for the transmission line are approximately $21,300,095, including costs for construction of the Dog House switchyard and modifications to the Clearfork switchyard. The Commission may approve other routes or route segments.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is January 12, 2019. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48861.

TRD-201805171
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 29, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Phoebe Solar Partners, LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48921.

The Application: Phoebe Solar Partners, LLC filed an application for approval of the issuance of class A equity interests to Wells Fargo Central Pacific Holdings, Inc. Phoebe Solar Partners is a wholly-owned subsidiary of Phoebe Equity Holdings, LLC. Phoebe Solar Partners will acquire all of the equity interest in Phoebe Energy Project, LLC, which is developing a 250 megawatt photovoltaic solar energy project in Winkler County. Phoebe Energy Project will be interconnected to the Electric Reliability Council of Texas (ERCOT). The applicant stated that the combined generation owned and controlled by Phoebe Solar Partners and its affiliated entities and Wells Fargo and its affiliated entities following the proposed sale will not exceed twenty percent of the total electricity offered for sale in ERCOT.

Persons wishing to intervene or comment on the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48921.

TRD-201805129
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application for Service Area Exception

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 28, 2018, for a certificate of convenience and necessity service area exception within Atascosa County.

Docket Style and Number: Application of AEP Texas Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception in Atascosa County, Docket Number 48919.

The Application: AEP Texas, Inc. seeks approval to extend its electric facilities to provide electric service to a proposed residential subdivision partially located within Karnes Electric Cooperative's singly-certificated service area. Karnes has agreed to relinquish its rights to provide service to the requested area. AEP received a request from Elias Woloski, President of E.E.A.C., Inc. and owner of the property of the proposed residential subdivision, to provide electric utility service to the proposed residential subdivision. The estimated cost for AEP to provide electric service to the requested area is $33,000.

Persons wishing to comment on the action sought or intervene should contact the commission no later than December 19, 2018, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48919.

TRD-201805128
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application for Service Area Exception

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 26, 2018, for a certificate of convenience and necessity (CCN) service area exception within Matagorda County.

Docket Style and Number: Application of Wharton County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity Service Area Exception in Matagorda County, Docket Number 48901.

The Application: Wharton County Electric Cooperative seeks approval to extend its electric facilities to provide electric service to a new residence within AEP Texas, Inc.'s singly-certificated service area. AEP Texas has agreed to relinquish its rights to provide service to the new residence. WCEC received a request from Sidney Rutkoski, owner of the residence located at 1621 FM 456, Markham, Texas 77456, for WCEC to provide her with electric utility service. The estimated cost for WCEC to build approximately 3,200 feet of single-phase primary line to provide electric service to the requested residence is $50,000.

Persons wishing to comment on the action sought or intervene should contact the commission no later than December 17, 2018, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission

through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48901.

TRD-201805114
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application for True-up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 15, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Ganado Telephone Company, Inc. for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48885.

The Application: Ganado Telephone Company, Inc. filed a true-up report in accordance with Findings of Fact Nos. 9, 10, 11, and 12 of the final Order in Docket No. 47683. The commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Ganado received in FUSF revenue by $39,770.00 for calendar year 2016. The projected reduction in FUSF revenue was reduced by $18,828.00 which reflected the projected overall increase in revenue for the rate increases that Ganado has implemented since 2012. Ganado Telephone also recovered a remaining balance of $20,942.00 from the TUSF. Thus, Ganado Telephone is due to refund $13,119.00 to the TUSF.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48885.

TRD-201805116
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 28, 2018, in accordance with Public Utility Regulatory Act §§54.151-54.156.

Docket Title and Number: Application of Tachus CLEC, LLC d/b/a Tachus Communications to Amend a Certificate of Operating Authority, Docket No. 48917.

The Application: Tachus CLEC, LLC d/b/a Tachus Communications seeks approval to amend certificate of operating authority 60997 to reflect a change in ownership and control. Tachus CLEC requests an amendment to reflect Tachus CLEC becoming a direct, wholly-owned subsidiary of Tachus Infrastructure, LLC.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than December 31, 2018. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48917.

TRD-201805126
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application to Amend Certificates of Convenience and Necessity Under Texas Water Code §13.248

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 26, 2018, to amend certificates of convenience and necessity under Texas Water Code §13.248.

Docket Style and Number: Application of Green Valley Special Utility District and the City of Schertz for Approval of a Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Guadalupe County. Docket Number 48911.

The Application: Green Valley Special Utility District and the City of Schertz (applicants) seek Commission approval of a service area contract under Texas Water Code §13.248 to transfer a portion of the service area held by Green Valley under water CCN number 10646 and sewer CCN 20943 to Schertz water CCN number 10645 and sewer CCN number 20271. The applicants request that their CCNs be amended to reflect the transfer of 60.78-acres water service area and 174.67-acres sewer service area as agreed to in the contract.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 935-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48911.

TRD-201805127
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Application to Amend Eligible Telecommunications Carrier and Amend Eligible Telecommunications Provider Designations

The Public Utility Commission of Texas gives notice of an application filed on November 20, 2018, to amend eligible telecommunications carrier and eligible telecommunications provider designations under 16 Texas Administrative Code (TAC) §26.417 and §26.418.

Docket Title and Number: Application of Grande Communications Networks, LLC to Amend its Designation as an Eligible Telecommunications Carrier and as an Eligible Telecommunications Provider, Docket Number 48898.

The Application: Grande Communications Networks, LLC seeks to amend its designations to add 10 wire centers from the service territories of two non-rural deregulated incumbent local exchange carriers,

Southwestern Bell Telephone Company dba AT&T Texas and Frontier Southwest Incorporated dba Frontier Communications of Texas, for the specific purpose of receiving Lifeline subsidies only. The 10 wire centers are described in the application. Under 16 TAC §26.417(f)(2)(A)(i) and §26.418(h)(2)(A)(i), the effective date is January 7, 2019.

Persons who wish to comment upon the action sought should notify the commission no later than December 31, 2018. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48898.

TRD-201805115
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on November 30, 2018, to amend a water certificate of convenience and necessity (CCN) in Collin County by expedited release.

Docket Style and Number: Petition of AIRW 2017-7, L.P. to Amend the City of McKinney's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket Number 48935.

The Petition: AIRW 2017-7, L.P. requests the expedited release of 138.413 acres of land located within the boundaries of the City of McKinney's water CCN number 20071 in Collin County.

Persons wishing to file a written protest or motion to intervene and file comments on the petition should contact the commission no later than January 2, 2019, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48935.

TRD-201805184
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: December 4, 2018

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 26, 2018, under Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of XIT Rural Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund, Docket Number 48904.

The Application: XIT Rural Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to XIT Rural for calendar year 2017. XIT Rural requests that the commission allow recovery of funds from the TUSF in the amount of $834,833 for 2017 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48904.

TRD-201805118
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 26, 2018, under Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of XIT Rural Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund, Docket Number 48904.

The Application: XIT Rural Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to XIT Rural for calendar year 2017. XIT Rural requests that the commission allow recovery of funds from the TUSF in the amount of $834,833 for 2017 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48904.

TRD-201805119
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 26, 2018, under Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of Alenco Communications, Inc. to Recover Funds from the Texas Universal Service Fund, Docket Number 48907.

The Application: Alenco Communications, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Alenco for calendar year 2017. Alenco requests that the Commission allow recovery of funds from the TUSF in the amount of $444,840 for calendar year 2017 to replace the projected reduction in FUSF support.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48907.

TRD-201805120
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Revised Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 13, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Patriot Wind TE Holdco LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48879.

The Application: Patriot Wind TE Holdco LLC filed an application for approval of three transactions. The first transaction is for the conveyance of Class A passive equity interests in Patriot Wind TE Holdco to Wells Fargo Central Pacific Holdings, Inc. and Avangrid Renewables. Patriot Wind TE Holdco is a wholly-owned subsidiary of Patriot Wind Holdings LLC. The second transaction is for the sale of Patriot Wind Holdings to Avangrid by Patriot Wind Class B LLC. In the final transaction, Patriot Wind TE Holdco will acquire 100% of the membership interests in Patriot Wind Farm, LLC, a wholly-owned subsidiary of Patriot Wind Seller LLC. Patriot Wind Farm is developing a 226.05 MW wind powered electric generation project in Nueces County that will be interconnected to the Electric Reliability Council of Texas (ERCOT). After all transactions are completed, Patriot Wind TE Holdco, Wells Fargo, and Avangrid will own 100% of the membership interests in Patriot Wind Farm. The combined generation owned and controlled by Patriot Wind TE Holdco and its affiliates, Wells Fargo and its affiliates, and Avangrid and its affiliates following the proposed transactions will not exceed twenty percent of the total electricity offered for sale in ERCOT.

Persons wishing to intervene or comment on the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48879.

TRD-201805117
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2018

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Teacher Retirement System of Texas

Award Notice - TRS Contract Number 19-0000030

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award of a consulting services contract for strategic consulting to Cascade Strategy USA, Inc., 31700 NW Commercial, P.O. Box 485, North Plains, OR 97133-6184. The term of the contract is 11/15/2018 through 9/30/2019. The Consultant will provide strategic analysis and quarterly strategic reporting, along with attendance at quarterly Board meetings, and preparation of Board meeting reports. The contract total is estimated to be $30,000.

TRD-201805130
LaTresa Stroud
Director of Procurement and Contracts
Teacher Retirement System of Texas
Filed: December 3, 2018

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Workforce Solutions Deep East Texas

Public Notice

Kaiser Group, Inc. dba Dynamic Workforce Solutions (DWFS) is seeking an employer of record for participants in the Wage Services for Paid Work Experience who are enrolled in various job training programs. Deadline for submitting a Proposal is December 26, 2018, at 4:00 p.m. The Request for Proposal (RFP#2-11-26-18) is available at *http://www.dwfs.us/doing-business-with-dwfs.html* or a request for a copy of the RFP can be made to: Chris Berry, CFO, DWFS, 237 South Street, Waukesha, Wisconsin 53186, phone (386) 597-3147, or email *cberry@dwfs.us*.

TRD-201805121
Chris Berry
CFO
Workforce Solutions Deep East Texas
Filed: November 30, 2018

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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