

# TEXAS REGISTER

*Volume 21 Number 73 October 1, 1996*

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***This month's front cover artwork:***

***Artist: Gilberto Dominguez***

***8th grade***

***Central Middle School, Galveston ISD***

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# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

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## Texas Ethics Commission

### Advisory Opinion Request

AOR Number 382 The Texas Ethics Commission has been asked to consider whether an individual may make a contribution to a political committee and request that the funds be used only to cover the committee's administrative costs.

AOR Number 383 The Texas Ethics Commission has been asked about the meaning of the phrase "particular matter" in §572.054 of the Government Code. The specific question is whether a grant application that a state agency makes to the federal government is a different matter from a proposal by a private company to receive grant proceeds from the state agency.

The Texas Ethics Commission is authorized by §571.91 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 305, Government Code; (4) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) Chapter 39, Penal Code. Questions on particular submissions should be addressed to the Texas Ethics Commission, P. O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613960

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: September 24, 1996



### Ethics Opinion Request

EAO-340

Questions concerning the activities in which an incorporated association may engage with respect to candidates for state office. (AOR-378)

#### SUMMARY

An incorporated association may make expenditures for candidate appearances before the association's members or stockholders only if all candidates for the office are given the same opportunity to appear and are presented on an equal footing. An incorporated association may make expenditures to set up a phone bank to urge members or stockholders and their families to vote for particular candidates, or to conduct a partisan get-out-the-vote drive directed at those individuals,

only if the candidates benefited have not given their prior consent or approval. Corporate expenditures incurred in issuing a press release through the corporation's usual press contacts announcing endorsements of candidates by a political committee established by the corporation are prohibited political expenditures.

EAO-341

Whether Ethics Advisory Opinion Number 185 (1994) stands for the proposition that the contingent fee prohibition in §305.022 of the Government Code does not apply to fees for communications to influence purchasing decisions, regardless of whether the fee is paid to a regular employee of a vendor or to an independent contractor. (AOR-379)

#### SUMMARY

Ethics Advisory Opinion Number 185 (1994), which concluded that the prohibition against certain contingent fees in §305.022 of the Government Code does not prohibit contingent fees for efforts to influence state agency purchasing decisions, applies to all fees for efforts to influence agency purchasing decisions, regardless of whether the person attempting to influence an agency purchasing decision is working as an employee of a vendor or as an independent contractor.

EAO-342

Application of contribution limits imposed by the Judicial Campaign Fairness Act to contributions made by a law firm. (AOR-380)

#### SUMMARY

In a judicial district with a population between 250,000 and 1,000,000, a law firm may not contribute more than \$2,500 in the aggregate per election to a candidate for district judge.

EAO-343

Whether a candidate forum to which only certain candidates are invited constitutes a communication in support of the candidates invited and whether a promise to abide by provisions in a city campaign finance ordinance is "consideration" for purposes of the definition of "political advertising." (AOR-381)

#### SUMMARY

Excluding candidates from a candidate forum makes the forum itself a communication in support of those included because the exclusion of certain candidates lends the sponsor's tacit support to those included as the candidates worthy of consideration by the audience.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P. O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on September 23, 1996

TRD-9614120

Tom Harrison  
Executive Director  
Texas Ethics Commission  
Filed: September 24, 1996



# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 20. Cotton Pest Control

##### Subchapter C. Stalk Destruction Program,

###### 4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction date for Pest Management Zone 2 Area 2 and Zone 2 Area 3.

The department is acting on behalf of cotton farmers in Zone 2 Area 2 which consists of Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas. The department is also acting on behalf of cotton farmers in Zone 2 Area 3 which consists of Aransas, San Patricio and south and east of U.S. Highway 59 in Bee and Live Oak.

The current cotton destruction deadline for Zone 2 Area 2 is September 20 and the current destruction deadline for Zone 2 Area 3 is September 25. The cotton destruction deadlines will be extended through October 1 for both these areas. The department believes that changing the cotton destruction date is both necessary and appropriate.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction dates for all counties in Pest Management Zone 2 Area 2 and Zone 2 Area 3. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the September 20 and September 25 deadlines. A failure to act to extend the cotton destruction deadlines could create a significant economic loss to Texas cotton producers and the state's economy.

The department believes that extending the cotton destruction deadlines in Pest Management Zone 2, Areas 2 and 3 as requested will not result in a significant increase in pest populations in the zone.

The emergency amendment to §20.22(a) will extend the dates for cotton destruction through October 1 of this year in Zone 2 Area 2 which consists of Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas and Zone 2 Area 3 which consists of Aransas, San Patricio and south and east of U.S. Highway 59 in Bee and Live Oak.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### *§20.22. Stalk Destruction Requirements.*

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:

Figure: 4 TAC §20.22(a)

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

Issued in Austin, Texas, on September 20, 1996.

TRD-9613828

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 20, 1996

Expiration date: October 5, 1996

For further information, please call: (512) 463-7583

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# PROPOSED RULES

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Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

**Symbology in proposed amendments.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

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## TITLE 4. AGRICULTURE

### Part II. Texas Animal Health Commission

#### Chapter 35. Brucellosis

##### Subchapter A. Eradication of Brucellosis in Cattle 4 TAC §35.2

The Texas Animal Health Commission proposes amendments to §35.2, concerning requirements of a slaughter test and quarantined feedlot requirements.

The proposed amendment is necessary to raise the slaughter test age on finish fed heifers from 24 months to 36 months, and require a slaughter test on eligible cattle from quarantined feedlots. The proposal amendment is also necessary to prohibit the movement of cattle from a quarantined feedlot to market.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Max Coats, State Epidemiologist, has determined that the public benefit anticipated is to reduce the possibility of animals from quarantined feedlots in spreading disease to other cattle in marketing channels. The amendment will enhance case finding efforts on animals required to be tested from quarantined feedlots.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the Commission with the authority to adopt rules and sets forth the duties of the Commission to control brucellosis.

The amendment implements §163.072 of the Texas Agriculture Code which requires the Commission to determine the method of collection of blood samples at slaughter plants and §§161.061, 163.065, and 163.066 of the Texas Agriculture Code which allows the Commission to establish quarantine requirements for brucellosis exposed cattle.

No other code or article is affected by these amendments.

##### §35.2. General Requirements.

(a)-(e) (No changes.)

(f) Requirements of a slaughter test. Slaughter plants operating in Texas shall collect blood from all test-eligible cattle slaughtered except **finish fed** [those] cattle **under 36 months of age** [from quarantined feedlots and finished fed heifers up to 24 months of age]. All blood samples collected at slaughter shall be submitted to a state-federal laboratory. Identification of the cattle in relation to the sample shall be maintained so that reactors or suspects may be traced to their herd of origin. The following collection procedures shall be followed:

(1) Blood samples shall be collected from each animal in tubes numbered in sequence for each day's kill and placed in innercell mailing cartons furnished by USDA.

(2)-(6) (No changes.)

(g)-(n) (No changes.)

(o) Requirements for a quarantined feedlot. All parturient and post parturient cattle must be officially tested for brucellosis within 30 days prior to entry into a quarantined feedlot. All cattle except steers and spayed heifers in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of cattle in drylot with no provisions for pasturing or grazing except in adjacent quarantined pastures. Negative exposed and untested test-eligible cattle must be permanently identified with a hot iron "S" brand high on the tailhead upon entering the quarantined feedlot. All cattle except steers and spayed heifers located in feedlots adjacent to quarantined pastures must be permanently identified with a hot iron "S" brand high on the tailhead upon entering such feedlots. All cattle except steers and spayed heifers leaving such feedlot must go directly to slaughter; or may be moved directly to another quarantined feedlot or designated pen with an "S" permit [; or may be "S" branded at the feedlot and move to a market to be sold for movement with an "S" permit issued at the market directly to another quarantined feedlot, to designated pens or directly to slaughter].

(p)-(v) (No changes.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 6, 1996.

TRD-9613688

Terry Beals, DVM

Executive Director

Texas Animal Health Commission  
Proposed date of adoption: November 7, 1996  
For further information, please call: (512) 719-0714



#### 4 TAC §35.6

The Texas Animal Health Commission proposes amendments to §35.6, concerning payment of indemnity for cattle exposed to brucellosis.

The proposed amendment is necessary to clarify that indemnity may be paid for sexually intact exposed cattle that are 18 months of age or older.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Max Coats, State Epidemiologist, has determined that the public benefit anticipated is to clearly state the intention of the Commission so public funds would be used only for payment of indemnity for sexually intact breeding animals 18 months of age and older. This amendment will permit greater disease control and eradication productivity for the monies expended.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provide the Commission with the authority to adopt rules and sets forth the duties of the Commission to control brucellosis.

The amendment implements §163.068 of the Texas Agriculture Code which authorizes the Commission to adopt rules regarding indemnity for cattle exposed to brucellosis.

No other code or article is affected by these amendments.

§ 35.6. *Indemnity Payments to Owners of Cattle Exposed to Brucellosis.*

- (a)-(b) (No changes.)
- (c) General Requirements.

(1) The Commission, through its Executive Director, will determine the amount and number of animals for which indemnity will be paid. The owner of a herd selected for indemnity may be reimbursed from TAHC funds for depopulation at a total rate not to exceed:

(A) \$100 per head for not more than 100 negative exposed **sexually intact** [test-eligible] females **18 months of age and older** and not more than five negative exposed[,] **bulls 18 months of age and older** [test-eligible males]; and

(B) Actual cost of spaying not to exceed \$10 per head. A spaying certificate and the proof of payment for cost of spaying must be submitted simultaneously with the indemnity claim.

- (2)-(8) (No changes.)
- (d) (No changes.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 6, 1996.

TRD-9613689  
Terry Beals, DVM  
Executive Director  
Texas Animal Health Commission  
Proposed date of adoption: November 7, 1996  
For further information, please call: (512) 719-0714



## Chapter 43. Tuberculosis

### Subchapter C. Eradication of Tuberculosis in Cervidae

#### 4 TAC §43.23

The Texas Animal Health Commission proposes amendments to §43.23, concerning requirements for entry into the state for cervids moving from an American Zoo and Aquarium Association (AZAA) accredited facility.

The proposed amendment is necessary to allow cervids from an AZAA accredited facility to move to another AZAA accredited facility without meeting tuberculosis entry requirements. Cervids moving from an AZAA accredited facility, within the state of Texas or from out-of-state, to other than an AZAA accredited facility would be required to fulfill interstate movement requirements regarding tuberculosis.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Max Coats, State Epidemiologist, has determined that the public benefit anticipated is to provide increased disease surveillance on animals that may be moving from the zoo environment to the public domain while not imposing requirements to test on animals that pose little risk to the livestock industry at large. The amendment would make it easier for zoos to bring in animals and increase the viewing options of the public.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the Commission with the authority to adopt rules and sets forth the duties of the Commission to control tuberculosis.

The amendment implements §161.054 and §161.061 which allow the Commission to regulate the entry of animals into the State.

No other code or article is affected by these amendments.

§43.23. *Requirements for Entry Into Texas.*

- (a)-(e) (No changes.)



(f) Cervids moving from an American Zoo and Aquarium Association (AZAA) accredited facility directly to another facility accredited by the AZAA are exempt from these entry requirements provided those cervids being moved are not commingled with cervids from other sources during the transfer [Institutional members of the American Association of Zoological Parks and Aquariums (AAZPA) must comply with these requirements when movement is between or from member facilities].

(g) Cervids sold or transferred from an AZAA accredited facility located either in Texas or another state to an owner/agent in Texas, other than another AZAA accredited facility, must comply with these testing requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 6, 1996.

TRD-9613687

Terry Beals, DVM

Executive Director

Texas Animal Health Commission

Proposed date of adoption: November 7, 1996

For further information, please call: (512) 719-0714



## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 1. Administration

#### Subchapter A. General Policies and Procedures

##### 10 TAC §1.2

The Texas Department of Housing and Community Affairs (Department) proposes an amendment to §1.2, concerning the Department's complaint system. The proposed amendment changes the person to whom complaints are submitted and clarifies that manufactured housing consumer complaints are not subject to this complaint system.

Anne Paddock, Deputy General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Paddock also 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 more efficient disposition of complaints. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Deputy General Counsel, P.O. Box 13941, Austin, Texas, 78711-3941, within 30 days of the date of this publication.

The amendment is proposed under Texas Government Code, §2306.066, which provides Texas Department of Housing and Community Affairs with the authority to develop procedures by which complaints are filed with the department. No other statutes, articles or codes are affected.

#### §1.2. Department Complaint System.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Complaint—A written complaint that a person believes the department has the authority to resolve, other than a complaint about the quality of services funded by a block grant administered by the department **or consumer complaints relating to manufactured housing.** Block grant complaints are governed by §1.11 and §1.1.3 of this title (relating to General Provisions; Complaint System) **and manufactured housing consumer complaints are governed by 10 Texas Administrative Code, §80.132.**

(2) Department—The Texas Department of Housing and Community Affairs.

(3) Person—Any individual, other than an employee of the department, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(c) Procedures. A person who has a written complaint may submit such complaint to the department's **director of administration and community affairs** [deputy executive director] or to any employee of the department for submission to the **director of administration and community affairs** [deputy executive director] or his designee.

(1) The **director of administration and community affairs** [deputy executive director] or his designee assigns a control number to the complaint, reviews the complaint, investigates, or causes an investigation to be completed, and submits the department's findings to the executive director of the department.

(2) The executive director or his designee shall either notify the complainant of the resolution of the complaint within 15 business days after the date the **director of administration and community affairs** [deputy executive director] received the complaint, or notify the complainant, within such period, of the date the complaint can be resolved.

(3) The executive director or his designee shall notify the complainant of the status of the complaint at least quarterly and until the final disposition of the complaint unless the notice would jeopardize an undercover investigation.

(4) An information file about each complaint shall be maintained.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613855

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 1, 1996  
For further information, please call: (512) 475-3916

◆ ◆ ◆  
Subchapter B. Block Grants

10 TAC §1.13

The Texas Department of Housing and Community Affairs (Department) proposes an amendment to §1.13, concerning the formal complaint system established to investigate complaints received about programs funded by federal block grants administered by the Department. The proposed amendment changes the person to whom complaints are submitted.

Anne Paddock, Deputy General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Paddock also 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 more efficient disposition of complaints. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Deputy General Counsel, P.O. Box 13941, Austin, Texas, 78711-3941, within 30 days of the date of this publication.

The amendment is proposed under Texas Government Code, §2105, which provides the Department with the authority to maintain a procedure for investigating complaints about programs funded by federal block grants administered by the Department. No other statutes, articles or codes are affected.

§1.13. *Complaint System.*

(a) A recipient who has a comment or complaint about the quality of services funded by a block grant administered by the department may submit such comment or complaint in writing to the **director of administration and community affairs** [deputy executive director] of the department.

(b) The **director of administration and community affairs** [deputy executive director] shall transmit a copy of the comment or complaint to the entity which is the subject of the comment or complaints within two calendar days for comments or complaints arising under the Texas Community Development Program or within five calendar days for all other block grant programs after the date the comment or complaint was received by the **director of administration and community affairs** [deputy executive director].

(c) The entity shall complete its investigation of the comment or complaint and submit its findings in writing to the **director of administration and community affairs** [deputy executive director] within seven business days for Texas Community Development Program comments or complaints or 20 calendar days for all other entities after the date the entity received the comment or complaint or notify the **director of administration and community affairs** [deputy executive director] within such period, of the date the investigation can be completed.

(d) The executive director of the department or his designee shall notify the complainant of the department's and the entity's

findings before the 15th business day for the Texas Community Development Program comments or complaints or the 31st calendar day for all other comments or complaints after the date the comment or complaint was received by the **director of administration and community affairs** [deputy executive director] or the executive director or his designee shall notify the complainant, within such period, of the date the investigation can be completed.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613854

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 475-3916

◆ ◆ ◆  
TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Program

Programs for Horses

16 TAC §§303.92-303.94, 303.97

The Texas Racing Commission proposes an amendment to §§303.92- 303.94 and new section §303. 97, concerning the rules for the Texas Bred Incentive Programs for horses. The amendments and new section adopt by reference the rules of the official horse breed registries in Texas for administering the Texas Bred Incentive Program for their respective breed of horse. The amendments clarify the date of the rules that are being adopted by reference.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendments and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Carter also has determined that for each of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the sections will be that the Texas Bred Incentive Programs for the various breeds of horse will be administered fairly, efficiently, and effectively. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments and new section as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments and new section are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.08, which authorizes the commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program.

The proposed amendments and new section implement Texas Civil Statutes, Article 179e.

*§303.92. Thoroughbred Rules.*

The commission adopts by reference the rules of the Texas Thoroughbred [Breeders'] Association **dated June/July 1996**, regarding the administration of the Texas Bred Incentive Program for thoroughbred horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at **8505 Cross Park Dr., #110**, [400 West 15th Street, Suite 625,] Austin, **Texas 78754-4594**.

*§303.93. Quarter Horse Rules.*

The commission adopts by reference the rules of the Texas Quarter Horse Association **dated August 28, 1996**, regarding the administration of the Texas Bred Incentive Program for quarter horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at **8505 Cross Park Dr., #110**, [400 West 15th Street, Suite 625,] Austin, **Texas 78754-4594**.

*§303.94. Arabian Horse Rules.*

The commission adopts by reference the rules of the Texas Arabian Breeders Association **dated August 18, 1996**, regarding the administration of the Texas Bred Incentive Program for Arabian horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at **8505 Cross Park Dr., #110**, [9420 Research Boulevard, Echelon III, Suite 200,] Austin, **Texas 78754-4594**.

*§303.97. Appaloosa Horse Rules.*

The commission adopts by reference the rules of the Texas Appaloosa Horse Club dated August 27, 1996, regarding the administration of the Texas Bred Incentive Program for Appaloosa horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at 8505 Cross Park Dr., #110, Austin, Texas 78754-4594.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613866

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 833-6699



Programs for Greyhounds

16 TAC §303.102

The Texas Racing Commission proposes an amendment to §303.102, concerning the Texas Bred Incentive Program for greyhounds. The amendment adopts by reference the rules of the Texas Greyhound Association for administering the Texas Bred Incentive Program for greyhounds. The amendment clarifies the date of the rules that are being adopted by reference.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the Texas Bred Incentive Programs for greyhounds will be administered fairly, efficiently, and effectively. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before October 31, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.09, which authorizes the commission to adopt rules relating to Texas-bred program for greyhounds.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§303.102. Greyhound Rules.*

The commission adopts by reference the rules of the Texas Greyhound Association **dated February 1, 1994**, regarding the administration of the Texas Bred Incentive Program for greyhounds. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at **8505 Cross Park Dr., #110**, [400 West 15th Street, Suite 625] Austin, **Texas 78754-4594**.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613860

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 833-6699



## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 75. Curriculum

## Subchapter AA. Driver Education

### 19 TAC §75.1010

The Texas Education Agency (TEA) proposes an amendment to §75.1010, concerning the certificate of completion of an approved driver education course. The section establishes the fee for a driver education certificate and requirements relating to issuing, completing, and maintaining the certificate.

The proposed amendment authorizes the TEA to supply driver education certificates to the Texas Department of Public Safety (DPS) for certification of DPS-approved driver education courses based on a legal opinion received from the Attorney General. The DPS submitted a request to the Texas Attorney General for a legal opinion on the transfer of certificates and DPS-approved driver education courses. The Attorney General's legal opinion expresses authority for TEA to provide driver education certificates to DPS.

J.R. Cummings, associate commissioner for special populations, has determined that for the first five-year period, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. The DPS will be charged \$1.00 for each driver education certificate, however, the fee will adequately cover the administrative costs of supplying certificates to DPS. The DPS can recover the fee for the driver education certificates and administrative costs in the course fees they charge for DPS-approved education courses.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in the accountability for driver education certificates for programs approved by the DPS and the elimination of unauthorized use. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under Senate Bill 964, §9A, 74th Texas Legislature, 1995, which authorizes TEA to provide by rule for the design and distribution of the driver education certificate and to charge a fee for each certificate.

The amendment implements Senate Bill 964, §9A, 74th Texas Legislature, 1995.

#### *§75.1010. Procedures for Student Certification.*

(a) The Texas Education Agency (TEA) shall be responsible for providing the driver education certificate (Form DE-964E) to public schools, education service centers (ESCs), and colleges or universities exempt from the Texas Driver and Traffic Safety Education Act. **The TEA shall also provide the DE-964E certificate to the Texas Department of Public Safety (DPS) for**

**driver education programs approved by DPS.** On this form, the driver education instructor and the chief school official, ESC **or** DPS director, or individuals designated by the chief school official or ESC **or** DPS directors [director] must certify that the driver education course was conducted according to TEA and DPS education standards for an approved course in driver education for Texas schools.

(1) For schools exempt from the Texas Driver and Traffic Safety Education Act **and programs approved by DPS**, the DE-964E certificate shall consist of five parts to be designated as follows: Texas Department of Public Safety Copies (Instruction Permit and Driver's License), Insurance Copy, Texas Education Agency Copy, and School Copy. The DE-964E certificate is used to certify completion of an approved driver education course and is a government record.

(2) The TEA shall charge a fee of \$1.00 for each DE-964E certificate provided.

(3) The DE-964E certificates shall be issued to the chief school official, ESC **or** DPS director, or individuals designated by the chief school official or ESC **or** DPS director to be responsible for managing the certificates. **The DPS shall be responsible for the DE-964E certificates provided to DPS-approved driver education programs.**

(4) Responsibilities of the chief school official, ESC **or** DPS director, or a designee.

(A) The chief school official, ESC **or** DPS director, or a designee may request to receive serially numbered DE-964E certificates for exempt schools **and programs approved by DPS** by submitting a completed order on the form provided by the commissioner of education stating the number of certificates to be purchased and including payment of all appropriate fees.

(B) The chief school official, ESC **or** DPS director, or a designee shall be responsible for accounting for each DE-964E certificate he or she has been issued. All DE-964E certificates and records of certificates shall be maintained in an orderly fashion.

(C) All DE-964E certificates and records of certificates must be provided to TEA or DPS upon request. The chief school official, ESC **or** DPS director, or a designee shall maintain the school copies of the certificates and submit the TEA copies of all issued certificates to TEA no later than February 15, June 15, and September 15 of each year. The chief school official, ESC **or** DPS director, or a designee shall return unissued DE-964E certificates to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(D) Each chief school official, ESC **or** DPS director, or a designee shall ensure that the policies concerning DE-964E certificates are followed by all individuals who have responsibility for the certificates.

(E) The chief school official, ESC **or** DPS director, or a designee shall maintain effective protective measures to ensure that unissued DE-964E certificates and records of certificates are secure. The chief school official, ESC **or** DPS director, or a designee shall report any incident of unaccounted DE-964E certificates to TEA immediately upon discovering the incident. If such an incident occurs, the chief school official, ESC **or** DPS director, or a designee shall conduct an investigation to determine the circumstances of the unaccounted certificates. A report of the findings of the investigation,

including measures taken to prevent the incident from recurring, shall be submitted to TEA within 30 days of the discovery.

(F) The right to receive DE-964E certificates may be immediately suspended for a period determined by TEA if:

(i) a TEA investigation is in progress and TEA has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(ii) the chief school official, ESC or DPS director, or a designee fails to provide information on records requested by TEA or DPS within the allotted time.

(5) The DPS copy of a DE-964E certificate must contain the original signature of the certified instructor. The name of the chief school official, ESC or DPS director, or a designee may be written, stamped, or typed.

(6) The chief school official, ESC or DPS director, or a designee may issue a duplicate DE-964E certificate to a student who completed a course under the responsibility of the chief school official, ESC or DPS director, or a designee. The duplicate shall indicate the control number of the original DE-964E certificate.

(b)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613851

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-9701



## Part VII. State Board for Educator Certification

### Chapter 230. Professional Educator Preparation and Certification

The State Board for Educator Certification proposes new Chapter 230, §§230.1-230.6, 230.91, 230.121, 230.151-230.161, 230.191-230.199, 230.231, 230.261-230.271, 230.301-230.308, 230.310, 230.311, 230.313-230.316, 230.319, 230.361, 230.391, 230.411-230.414, 230.431-230.438, 230.461-230.463, 230.481-230.484, 230.501-230.507, 230.509-230.511, 230.531, 230.532, 230.551-230.560, 230.601, 230.610, 230.611, and 230.901 concerning Professional Educator Preparation and Certification. Subchapter A concerns the Educator Preparation Accountability System; Subchapter D concerns Local Cooperative Teacher Education Centers; Subchapter E concerns Centers for Professional Development and Technology; Subchapter F concerns Professional Educator Preparation; Subchapter G concerns Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements; Subchapter H concerns Alternative Certification of Teachers; Subchapter I concerns

Standards for Approval of Institutions Offering Graduate Education Programs for Professional Certification; Subchapter J concerns Graduate Education Programs for Professional Certification; Subchapter K concerns Alternative Certification of Administrators; Subchapter L concerns Postbaccalaureate Requirements for Persons Seeking Initial Teacher Certification through Approved Texas Colleges and Universities; Subchapter M concerns Certification of Educators in General; Subchapter N concerns Certificate Issuance Procedures; Subchapter O concerns Texas Certificates Based on Certification and College Credentials from Other States; Subchapter P concerns Requirements for Provisional Certificates and Specialized Assignments or Programs; Subchapter Q concerns Permits; Subchapter R concerns Record of Certificates; Subchapter S concerns Paraprofessional Certification; Subchapter U concerns Assignment of Public School Personnel; Subchapter V concerns Continuing Education; and Subchapter Z concerns General Provisions Relating to the Transition of Authority to the State Board for Educator Certification. This new Chapter is being proposed to allow the State Board for Educator Certification to assume its statutory duties.

Senate Bill 1 (74th Legislature) created the State Board for Educator Certification to grant educators the authority to govern their own profession. This new Chapter 230 transfers from the State Board of Education to the State Board for Educator Certification rules that currently exist concerning the preparation and certification of educators. No substantive changes to the existing rules have been made. The only changes proposed deal with transferring authority from the State Board of Education to the State Board for Educator Certification and conforming the rules to the new Texas Education Code.

Mark Littleton, Executive Director, has determined that for the first five-year period the Chapter is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the Chapter.

Mr. Littleton also has determined that for each year of the first five years the Chapter is in effect the public benefit anticipated as a result of enforcing the Chapter will be the transfer of authority for governance of the education profession to the State Board for Educator Certification. The anticipated economic cost to persons who are required to comply with the Chapter as proposed will be the fees for required tests and the issuance of a certificate.

Comments on the proposal may be submitted to Stephanie A. Korcheck, Director of Policy and Planning, State Board for Educator Certification, 1001 Trinity, Austin, Texas 78701. The deadline for receipt of written comments will be 5:00 p.m. on the 30th day after the issue date of the *Texas Register* in which this proposal appears.

The Chapter is proposed under the Texas Education Code (TEC), Chapter 21, Subchapter B, §21.041(b)(1), which authorizes the State Board for Educator Certification to propose rules that provide for the regulation of educators and the general administration of Subchapter B. Subchapter A. Educator Preparation Accountability System 19 TAC §§230.1-230.6

Subchapter A. Educator Preparation Accountability System

## 19 TAC §§230.1-230.6

These sections are proposed under Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the continuing accountability of all educator preparation programs.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

### §230.1. *General Provisions.*

#### (a) Policy.

(1) The legally constituted authorities of Texas are responsible for insuring an adequate supply of qualified and competent professional educators for the state public school system. This chapter relating to the professional educator preparation accountability system governs all accreditation of:

(A) institutions of higher learning, school districts, and/or education service centers in the preparation of educators;

(B) individual educator preparation programs in such institutions of higher learning, school districts, and/or education service centers; and

(C) licenses and degrees that are conferred by or based upon credit earned and/or training completed in an approved educator preparation program.

(2) The State Board for Educator Certification (SBEC) will adopt outcome-based standards that form the basis for all educator preparation, certification, and licensure.

(3) The professional educator program review process includes the identification, the coordination of preparation and performance, and the development and continuous accreditation of programs and entities concerned with preparing educators. The process is administered through the SBEC. Monitoring the quality of educator preparation is a major function of the SBEC and shall comply with law.

(b) Administrative procedure. The SBEC is responsible for administering the educator preparation, certification, and licensure programs.

### §230.2. *Purpose of Institutional Accountability System.*

The purpose of the institutional accountability system is to assure that educator preparation programs and the institutions that sponsor these programs are held accountable for the readiness of educators exiting the programs. Accountability for outcomes is determined by assessing educators' performance on outcome-based criteria indicators and other performance indicators.

### §230.3. *Criteria for Institutional Accountability.*

(a) The standards for outcome-based educator preparation and training programs adopted by the State Board for Educator Certification (SBEC) are the main consideration of the SBEC in the accreditation of all programs.

(b) Each educator preparation program must file an annual performance report with the SBEC no later than November 1 following each academic year. For the purposes of reporting, an academic year is defined as September 1 - August 31. The SBEC designs the components of the report to comply with statutory

requirements and provide a comprehensive analysis of the preparation programs.

(c) The SBEC adopts performance indicators for which the programs are held accountable. Each educator preparation program must submit an annual performance report to the SBEC that includes the level of attainment on the performance indicators as part of the comprehensive analysis of the educator preparation programs.

(d) The accreditation process shall include consideration of:

(1) adequate institution, program, and student educator achievement under the performance indicators adopted by the SBEC;

(2) performance on the outcome-based standards required by this section; and

(3) the relevance of the relationship between the goals, objectives, and results of educator programs of the institution and educator performance, which includes consideration of:

(A) compliance with statutory requirements and SBEC regulations; and

(B) assessment of the institution's ability to produce quality educators.

### §230.4. *The Accreditation Process.*

(a) The State Board for Educator Certification (SBEC) establishes the levels of accreditation and determines the accreditation status of and approves any sanctions against all educator preparation programs.

(b) For each institution, the executive director of the SBEC determines the level of review needed (including the frequency of on-site visits) based on the annual performance report prepared by the SBEC staff. This report measures the institution and its program's achievement with approved performance indicators.

(c) If potential problems with a program are identified, the executive director may direct the SBEC staff to conduct on-site visits to the institution and may raise or lower a program's accreditation rating as a result of the investigations.

(d) The executive director notifies in writing an institution's president and dean or department chair of education, an education service center executive director, and/or a superintendent of a school district before a scheduled accreditation visit. The report becomes public upon receipt by the program and must be reviewed in its entirety by the institution's president and the program's collaborative partners at a regularly scheduled meeting as soon thereafter as possible.

(e) If a program disagrees with its accreditation status, it may request a hearing according to the due process procedures established by the SBEC.

(f) This section takes effect at the beginning of the 1998-99 school year. This subsection expires on January 1, 1999.

### §230.5. *Educator Assessment.*

(a) Anyone seeking admittance to an approved teacher preparation program must pass a competency examination of basic skills prescribed by the State Board for Educator Certification (SBEC). The effective date of this requirement is May 1, 1984.

(b) Anyone seeking certification as a teacher or an administrator must pass examinations prescribed by the SBEC. The effective

dates of this requirement are February 1, 1986, for teachers, and February 1, 1987, for administrators. Anyone seeking certification as a teacher must take examinations required by Texas Education Code (TEC), §21.048, except a person seeking certification as a vocational teacher based on experience and preparation. Anyone seeking certification as a vocational teacher based on experience and preparation must pass a basic skills examination approved by the SBEC.

(c) Anyone seeking certification as a teacher or an administrator in Texas for the first time based upon completion of an approved teacher or administrator preparation program in Texas may take examinations under the provisions of subsection (b) of this section during the last term of the person's preparation program or during the spring term if the last term is in the summer.

(d) Anyone with a Texas certificate effective before February 1, 1986, must pass reading and writing examinations prescribed by the SBEC to be eligible for continued certification, unless a person has passed an alternative examination approved by the SBEC and administered by a school district or has passed an examination required by subsection (b) of this section.

(e) For any examination or other assessment required by law or under the provisions of this section, the SBEC approves the satisfactory level of performance required, a schedule of examination fees, and a plan for administering the examination.

(f) Scores from all examinations required under this section must be sent to the examinee, the SBEC and if appropriate, the institution from which the examinee will seek certification as a teacher or an administrator.

(g) An individual seeking an exemption under Texas Education Code (TEC), §21.048, must have a report submitted to the SBEC by an audiologist licensed by the State of Texas documenting that the applicant is hearing impaired as defined in Texas Education Code (TEC), §21.048(d)(1). The report from the audiologist may not be dated more than one year from the date of application for the exemption

(h) The following provisions concern test security and confidential integrity.

(1) The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Educator – Consistent with Texas Education Code (TEC), §5.001(5) and 21.003(a), an educator is a person who is required to hold a certificate issued by the SBEC, including teachers, teacher interns or teacher trainees, librarians, educational aides, administrators, and counselors.

(B) Certificate or certification – Any certificate, license, permit or other credential issued by the SBEC under authority of Texas Education Code (TEC), Chapter 21, Subchapter B.

(C) Examination – Any examination or other test required by statute or SBEC rule that governs a person's admission to any program of educator preparation; certification as an educator; continuation as an educator; or advancement as an educator.

(2) An educator who participates in the development, design, construction, review, field testing, or validation of any examination shall not reveal or cause to be revealed the contents of that examination to any other person.

(3) An educator who administers any examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(4) Any educator who violates subsection (b) or (c) of this section is subject to sanction in accordance with the provisions of Texas Education Code (TEC), §21.041(b)(7).

(5) An educator who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(6) Any educator who violates subsection (h) of this section is subject to:

(A) sanction in accordance with the provisions of Texas Education Code (TEC) 21.041(b)(7)

(B) voiding of any score from an examination in which violations in subsection (h) of this section occurred; and

(C) disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the profession.

(i) An individual seeking certification to teach visually impaired students must pass the test of braille reading and writing skills adopted by the SBEC by performing at or above the standard adopted by the SBEC.

§230.6. *Effective Date.*

Effective September 1, 1994, individuals enrolled or participating in educator programs will complete their respective programs based on approved outcome standards and appropriate levels of performance adopted by the State Board for Educator Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

TRD-9613885  
Mark Littleton  
Executive Director  
State Board for Educator Certification  
Proposed date of adoption: November 1, 1996  
For further information, please call: (512) 469-3004

◆ ◆ ◆  
Subchapter D. Local Cooperative Teacher Education Centers

**19 TAC §230.91**

This section is proposed under the Texas Education Code (TEC), §21.051, which requires the State Board for Educator Certification to propose rules providing flexible options for field experience or internships required for certification.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.91. The Program in General.*

(a) Local cooperative teacher education centers shall provide, through contracts between colleges and universities and public school districts, student teaching programs in accordance with applicable law and teacher certification requirements under this chapter. The student teaching program of the local cooperative teacher education centers provides professional laboratory and field experiences cooperatively designed and administered by colleges and universities and public school districts.

(b) The requirements for operation of local cooperative teacher education centers by colleges and universities and public school districts are as follows.

(1) The center shall submit to the State Board for Educator Certification (SBEC) by August 1 of each year its plan for professional field experiences for the school year. Copies of the plan shall be filed with each participating college or university and public school district. The suggested outline for the local cooperative teacher education center plan is as follows:

- (A) administrative design for center;
- (B) program design for student teachers;
- (C) roles and responsibilities of the:
  - (i) college; and
  - (ii) public school;
- (D) criteria for selection of supervisors of student teachers;
- (E) inservice improvement plan for supervisors of student teachers;
- (F) evaluation design for:
  - (i) student teacher;
  - (ii) program; and
  - (iii) revision.

(2) Each college or university approved for teacher education shall submit official lists of students enrolled in student teaching in the fall and spring semesters of each school year to the SBEC no

later than April 1 of each year. The student must be enrolled full time in student teaching as required in this chapter, and must be working toward an initial Texas teacher certificate.

(3) Summer student teaching programs shall be annually approved by the SBEC before April 1. Summer student teaching programs must meet all the requirements of the regular session programs. The application for approval shall include an estimate of the number of student teachers to be in the summer program. Official lists shall be provided at the end of the official add-and-drop period designated by the college or university. Summer student teachers shall be counted in the state fiscal year, September 1-August 31, in which they are enrolled.

(4) The requirements for local cooperative teacher education centers apply to all degree programs for teacher certification under this chapter.

(5) Each college or university shall designate one person to be responsible for administration of this program and shall submit that person's name to the SBEC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

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Subchapter E. Centers for Professional Development and Technology

**19 TAC §230.121**

This section is proposed under Texas Education Code (TEC), §21.047, which allows the State Board for Educator Certification to propose rules that create a process to establish centers for professional development.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.121. Establishment of Centers for Professional Development and Technology.*

(a) General Provisions. Institutions of higher education with approved teacher education programs may establish centers for professional development and technology under a process developed jointly by the State Board for Educator Certification (SBEC) and the Texas Higher Education Coordinating Board (THECB). The purpose of the centers is to integrate technology and innovative teaching practices into the preservice and staff development training of teachers and administrators. Approval of a center for professional development and technology shall be based on the following requirements.

(1) The center must be established by one or more institutions of higher education with approved teacher education programs through a collaborative process involving public schools, regional education service centers, and other entities or businesses.



(2) The center must develop and implement comprehensive field-based teacher education programs and/or activities and services.

(3) The center must be designed on the basis of current research in:

(A) state-of-the-art teaching practices;

(B) curriculum and instructional knowledge and application that includes strategies to work with culturally diverse populations;

(C) evaluation of student and teacher outcomes; and

(D) the effective application of technology.

(4) The center must have rigorous internal and external evaluation procedures that focus on teacher and student outcomes, program content, and delivery systems.

(b) Requirements for an approved plan. The collaborative group described in subsection (a)(1) of this section must submit a plan to the SBEC for approval of a center before implementing a center. The plan must reflect the group's commitment to:

(1) dedicate the center to addressing the educational needs of all children, especially those in low-performing school sites;

(2) recognize the authority of each collaborative group to design, implement, operate, and evaluate all aspects of the center;

(3) recognize contributions of faculty and administrative staff through field-based practice in centers as a form of legitimate scholarship in support of the mission of the institution of higher education;

(4) establish organizational and administrative structures to support the center;

(5) include funding and resource allocations for the establishment, implementation, evaluation, and maintenance of the center;

(6) designate program delivery systems with adequate, qualified staff to ensure appropriate planning, training, and evaluation;

(7) develop written agreements defining the terms and levels of commitments of all entities in the collaborative group;

(8) establish a governance structure that:

(A) includes teachers, administrators, education service center staff, faculty and administrators from institutions of higher education, and persons from other entities or businesses;

(B) reflects the cultural diversity of the state; and

(C) requires that no one category representation is larger than the K-12 teacher representation;

(9) develop policies and practices for restructuring teacher preservice preparation and staff development that focus on outcomes for teachers, and include:

(A) mission, goals, objectives, and outcomes;

(B) participants, personnel, and management;

(C) program design, delivery, and expenditures; and

(D) evaluations and results; and

(10) develop a calendar of scheduled activities for the year(s) for which programs, activities, and services are approved, and a timeline for accepting candidates into the center programs.

(c) Characteristics of approved centers. Each approved center for professional development and technology must:

(1) implement programs, activities, and/or services that are field-based in one or more public schools and provide experiences in public schools that reflect diverse cultural, socioeconomic, and grade level environments;

(2) use current research relating to state-of-the-art best practices that focuses on teaching and learning through a planned sequence of experiences that integrates knowledge with application and implements current best practices that focus on student achievement in areas such as:

(A) shared decision-making;

(B) problem solving;

(C) classroom and discipline management;

(D) strategies for understanding and working with culturally diverse populations; and

(E) subject matter and pedagogical content;

(3) integrate the use of technology with effective teaching practices, including preservice preparation programs that provide instruction in technological competencies such as those identified by the International Society for Technology in Education (ISTE);

(4) provide programs, activities, and services that focus on enhancing student and teacher outcomes, such as:

(A) collaboratively planning professional development outcomes that are based on current research and best practice and that undergo continual review; and

(B) integrating campus improvement plan(s) at field-based school site(s) into the center's evaluation design; and

(5) provide continuous, rigorous, internal and external evaluation strategies that include the constituent partners in the qualitative and quantitative assessment of student and teacher outcomes, including evaluation strategies that address:

(A) measures that include the assessment of learner outcomes in the school site using the academic excellence indicator system (AEIS) adopted by the State Board of Education under the Texas Education Code (TEC), §39.051;

(B) basic skills in mathematics, reading, and writing as evidenced by acceptable scores on the state-mandated basic skills test required for all center preservice teacher candidates;

(C) successful performance on appropriate state-adopted examination(s) required for all certification candidates;

(D) performance evaluations of the program's students using a variety of assessments; and

(E) full appraisal requirements of the state and local district for the program's students.

(d) Authority for comprehensive field-based teacher education programs offered through approved centers. Approved centers may propose for approval comprehensive field-based teacher educa-

tion programs to supplement the limitations set in the Texas Education Code (TEC), §21.050(b).

(e) Requirements for funding of approved centers. Approved centers may apply to the SBEC for competitive grants from funds derived from gifts, grants, and legislative appropriations for the purposes outlined in subsection (f) of this section. Competitive grants may be awarded to centers by geographical areas to provide programs, activities, and services throughout the state.

(f) Programs, activities, and services of approved centers.

(1) Approved centers may provide preservice and professional staff development for teachers and administrators that:

(A) helps develop strategies for achieving academic excellence and for relating campus performance objectives to student outcomes;

(B) promotes effective teaching practices that incorporate technology and technological applications; and

(C) coordinates with the textbook adoption cycle and the restructuring of the public school curriculum.

(2) Approved centers with preservice and professional staff development for teachers and administrators may target one or more programs for recruiting, training, or retraining minorities and other persons as teachers in subject areas for which there is a shortage of teachers.

(3) Approved centers with preservice and professional staff development for teachers and administrators may provide specialized summer institutes addressing topics such as:

(A) effective application of technology;

(B) innovative and visionary strategies for effective teaching;

(C) district-level and campus-level collaborative decision-making that focuses on student achievement;

(D) site-based management for teachers, administrators, and school board trustees that focuses on student achievement; or

(E) technical writing and the development of innovative grant proposals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter F. Professional Educator Preparation

### 19 TAC §§230.151-230.161

These sections are proposed under Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.151. Standard I. Degree Granting Authority and Accreditation.*

(a) Standard. The institution shall be authorized by the State of Texas to grant degrees of at least the baccalaureate level, accredited by the Southern Association of Colleges and Schools, and approved by the State Board for Educator Certification (SBEC).

(b) Quality indicators.

(1) The institution shall provide documentation of current and continuing authority to grant degrees, of at least the baccalaureate level, in the State of Texas.

(2) The institution shall provide documentation of current and continuing accreditation by the Southern Association of Colleges and Schools.

(3) Institutions shall provide documentation of current and continuing approval of programs by the SBEC.

*§230.152. Standard II. Policy Commitment to Teacher Education.*

(a) Standard. The institution shall demonstrate a commitment to teacher education as an institutional objective through policy enactment.

(b) Quality indicators.

(1) Short and long-range planning documents of the institution shall confirm its commitment to teacher education as an institutional objective.

(2) The professional education unit shall be established at an organizational level within the institution that allows it to assume its responsibilities and fulfill its objectives.

(3) The administrative head of the professional education unit shall have authority and responsibility comparable to heads of other similar organizational units.

(4) The faculty workload policies shall be applied uniformly throughout the institution and shall be consistent with generally accepted practice and with consideration for student teaching supervision loads, practice, and internships in field-based laboratory settings.

(5) Each semester faculty workload for supervisors of student teachers shall facilitate effective and regular supervision and shall not exceed an average of two student teachers per semester hour of workload credit for all supervisors.

(6) The class size and structure of professional education courses shall allow for implementation of approved course and program objectives.

(7) The faculty evaluation and merit system, including policies related to tenure, promotion, and salary increments, shall provide for recognition of performance in the full range of professional endeavors from scholarly activities on campus to innovative and creative field-related activities.

(8) The institution shall provide for continuing professional development opportunities for faculty in professional education.

*§230.153. Standard III. Organizational Structure for Teacher Education.*

(a) Standard. The institution shall provide, through its organizational structure, a professional education unit with responsibility for the development and leadership of the teacher education programs.

(b) Quality indicators.

(1) The responsibility for leadership and coordination of teacher education shall be vested in qualified individuals with leadership ability.

(A) The head of the professional education unit shall hold an earned doctorate from an accredited institution.

(B) The head of the professional education unit shall have at least three years of relevant elementary or secondary school experience. Relevant experience must include a minimum of one year of full-time, full-day classroom teaching and may include other instructionally related roles.

(C) The head of the professional education unit shall coordinate the teacher education programs of the institution.

(2) Individuals assigned to areas of specialization, teaching fields, and endorsement components of teacher education programs shall have commensurate graduate preparation in the area of assignment.

(3) The institution shall provide for cooperative advisement of students between the professional education unit and the academic departments providing instruction in approved areas of specialization, teaching fields, and endorsements.

(4) The institution shall provide a procedure for interaction and consultation among faculty in those areas involved with teacher preparation.

(5) The professional education unit shall provide documentation, including employment opportunities, as evidence of educational need for all proposed areas of specialization, teaching fields, and endorsement areas at the time the proposal is submitted for approval to the State Board for Educator Certification (SBEC).

(6) The professional education unit, following the formal review process of the institution, shall be responsible for approving and submitting program proposals to the SBEC for approval.

(7) The institution shall place the responsibility for recommendations for certification with the head of the professional education unit.

(8) When appropriate, and with the approval of the executive director of the SBEC, an institution may deviate from the standards concerning teaching experience by justifying a faculty member's assignment in terms of experience, preparation, and eminence.

*§230.154. Standard IV. The Professional Education Unit.*

(a) Standard. The institution shall provide a professional education unit with the responsibility for the institution's teacher education program.

(b) Quality indicators.

(1) The professional education unit (school, college, division, or department) shall be responsible for initiating, implementing, and evaluating the teacher education program based upon advice from the academic discipline faculty, the professional education faculty, public school personnel, and learned societies.

(2) The administrative head (dean of education, chairman of education, or director of teacher education) shall direct and coordinate the teacher education program of the institution.

(3) The professional education unit shall be responsible for the administration of admission policies for teacher education programs and the coordination of advisement activities for students preparing for certification as educators.

(4) The professional education unit shall be identifiable in the institutional budget which shall provide for an administrative head, faculty and staff salaries, faculty development, maintenance and operating costs, travel, instructional services, and other support functions for teacher education.

(5) The professional education unit shall be responsible for the organization of the local cooperative teacher education center in accordance with Subchapter D of this chapter (relating to Local Cooperative Teacher Education Centers).

*§230.155. Standard V. General Programs and Curriculum Characteristics.*

(a) Standard. The institution shall provide at least the following three dimensions of curricula for teacher education students:

(1) a broad-based general education;

(2) teaching specialty designed for Texas public school instructional assignments; and

(3) a professional studies program designed for specific roles in public school teaching.

(b) Quality indicators.

(1) The general education curriculum shall be designed to advance general literacy and to provide higher levels of proficiency in the skills of communication, information retrieval and processing, and effective interaction in a multicultural society.

(2) The institution shall provide a curriculum sequence in each approved teaching specialty that includes in the content the essential knowledge and skills adopted by the State Board of Education under Texas Education Code (TEC) §28.002(c)-(d), which must be taught to public school students, and complementary studies to provide for perspective, flexibility, and versatility in teaching.

(3) The professional studies component shall include laboratory experiences or clinical experiences with the study of theory.

(4) Each preparation program shall include studies of the multicultural character of American society with emphasis on working with the various types of students in the Texas school population.

(5) The institution shall seek advice from the academic discipline faculty, the professional education faculty, and public school teachers, curriculum personnel, and administrators in determining the curriculum for teacher education students.

(6) All programs in the teacher education curricula shall be developed from stated goals and objectives that reflect an awareness of the recommendations of practicing professionals and learned societies.

(7) The programs submitted to the State Board for Educator Certification (SBEC) shall be accompanied by documentation of review by the local cooperative teacher education center established under Subchapter D of this chapter.

(8) The institution shall have clearly defined written procedures for approving transfer work from other institutions. The only credits and degrees acceptable for certification of all educators are those earned and conferred by institutions of higher education which were accredited or otherwise approved at such time by a state department of education, a recognized governmental entity, or a recognized regional accrediting organization.

(9) Candidates recommended for certification shall be required to show satisfactory performance on a comprehensive examination in each certificate area as required by the SBEC.

*§230.156. Standard VI. Characteristics of Teacher Education Faculty.*

(a) Standard. The institution shall provide a sufficient number of faculty members who have appropriate preparation and experience to support the programs for which the institution is approved.

(b) Quality indicators.

(1) General faculty qualifications.

(A) Faculty members shall possess documented subject matter expertise in one or more academic fields of specialization or areas of assignment.

(B) Documentation of demonstrated ability to teach effectively shall be accessible to accreditation teams for each member of the teaching faculty participating in teacher education programs.

(C) The institution shall provide qualified, full-time faculty members of sufficient number in each academic area or area of assignment to ensure students of contact with varying viewpoints in the area.

(2) Teaching field faculty.

(A) In each teaching field at least one faculty member shall hold an earned terminal degree from an accredited institution in an area commensurate to the assignment.

(B) Each faculty member teaching upper-division courses included as part of a teaching field shall hold at least an earned master's degree from an accredited institution in the area of assignment or the equivalent.

(C) At least 30% of the courses provided in a teaching field shall be taught by persons with earned terminal degrees in the area of assignment from accredited institutions.

(D) College or university supervisors of student teachers shall have at least three years of elementary or secondary teaching experience in the teaching field for which teachers are being prepared.

(E) When appropriate, and with the approval of the executive director of the State Board for Educator Certification

(SBEC), an institution may deviate from the standards concerning teaching experience by justifying a faculty member's assignment in terms of experience, preparation, and eminence.

(3) Professional education faculty.

(A) Each faculty member who serves as a director of a component in the professional education unit shall have an earned doctorate from an accredited institution in an area commensurate to the assignment.

(B) Each faculty member who serves as a director of a component in the professional education unit shall have a minimum of three years' experience at the level for which teachers are being prepared. Directors of all-level components shall have experience in at least one of the levels for which teachers are being prepared.

(C) Each faculty member in the professional education unit shall hold at least an earned master's degree from an accredited institution with specialized preparation in the area of assignment.

(D) At least 50% of the work provided in professional education shall be taught by persons holding the earned doctorate in education from accredited institutions.

(E) The majority of the full-time faculty and all teachers of education methods courses in the professional education unit shall have certification or the equivalent and at least three years of elementary or secondary teaching experience at the level or in the teaching field for which teachers are being prepared.

(F) College or university supervisors of student teachers shall have certification or the equivalent and at least three years of elementary or secondary teaching experience at the level or in the teaching field for which teachers are being prepared.

(G) The institution shall provide appropriate and continuing professional development activities for faculty in the professional education unit.

(H) Each faculty member who teaches a professional education course shall maintain a minimum of 90 clock hours of involvement in field situations with accredited schools every seven years.

(I) When appropriate, and with the approval of the executive director of the SBEC, an institution may deviate from the standards concerning teaching experience by justifying a faculty member's assignment in terms of experience, preparation, and eminence.

*§230.157. Standard VII. Student Development Services.*

(a) Standard. The institution shall provide student services through admission and retention policies, testing, counseling and advisement, and professional placement activities that are responsive to the unique needs of the student populations preparing to enter the education profession.

(b) Quality indicators.

(1) The institution shall establish and maintain an approved plan for the administration of the state-adopted basic skills and competency tests.

(A) An existing testing center at an institution with approved teacher education programs may be used provided the plan for the center meets all testing center criteria and is approved by the State Board for Educator Certification (SBEC).

(B) An institution with approved teacher education programs may establish and operate a joint testing center by submitting a joint plan with another institution or institutions with approved teacher education programs which meets all testing center criteria and is approved by the SBEC.

(2) The institution shall publish and disseminate the minimum acceptable scores established by the SBEC on the state-adopted basic skills test required for admission into the teacher education program and the state-adopted competency examinations required for certification in the areas of teacher preparation for which the institution is approved. An institution which requires a score on the state-adopted basic skills test that exceeds the minimum score established by the SBEC shall publish and disseminate the fact that the score required by the institution exceeds the state minimum requirements.

(3) The institution shall publish and disseminate specific admission and retention policies for the teacher education program and for student teaching.

(A) Candidates admitted to teacher education programs shall be required to achieve a satisfactory level of performance on a competency examination of basic skills as required by the SBEC.

(B) The admission and retention policies for teacher education shall state academic qualities, student performance, prerequisite field experience, personal and social qualities, and physical and mental health as indicators of fitness for the education profession.

(C) The admission and retention policies for student teaching shall state academic and performance standards as well as prerequisite field experiences.

(4) The institution shall require candidates for teacher certification to have attained junior standing as defined and published by the respective institution before admission to the teacher education program.

(5) The institution shall limit candidates for teacher certification to the completion of no more than six semester hours of professional education courses before admission to the teacher education program.

(6) The institution shall have written documentation of admission to the teacher education program for each candidate for teacher certification.

(7) The institution shall evaluate and accept transferred credits in accordance with published institutional policies.

(8) The institution shall grant credit in professional education for correspondence courses, advanced placement, and independent studies in accordance with approved, published institutional policies.

(9) The institution shall provide counseling and advisement to assist students in the professional preparation program.

(A) Program counseling and advisement shall be administered and coordinated by the professional education faculty.

(B) Counseling and advisement about programs of study, performance standards, and career opportunities shall be provided before the student makes a substantial commitment to teacher education.

(C) Counseling and advisement services shall assist students in the appraisal of personal potential, diagnosis of individual needs, and referrals for remedial services.

(D) Counseling and advisement services shall provide procedures for directing students into other fields of study when advisable.

(E) The institution shall have an information system that provides current data on student performance and progress for counseling and advising.

(10) The institution shall provide placement services to assist teacher education graduates seeking professional employment.

(A) The institution shall list professional positions known to be currently available.

(B) The institution shall make available information about the qualifications and potential of teacher education graduates to school districts on request.

(C) The institution shall provide opportunities for employers to interview students on campus.

*§230.158. Standard VIII. Facilities and Resources for Teacher Education.*

(a) Standard. The institution shall provide and maintain accessibility to physical facilities and learning resources necessary to achieve the objectives of its teacher education programs.

(b) Quality indicators.

(1) The physical facilities shall meet the operational requirements of the objectives of the teacher education programs.

(2) The physical facilities provided for the professional education unit shall be comparable in quality and appropriateness to those provided by the institution for other areas of professional study.

(3) The physical facilities for programs and faculty shall facilitate professional communication.

(4) Specialized facilities, such as clinics and laboratories, shall be provided and equipped as required for each program area for which the institution is approved.

(5) Instructional media in multiple formats shall be provided for faculty and students.

(6) Facilities, equipment, and materials for the preparation of instructional media shall be provided as required for each program area for which the institution is approved.

(7) The institution shall provide for acquisition of current, quality materials for instruction and research for the professional education unit and for each program area for which the institution is approved.

(8) Acquisition guidelines for library collections shall provide for input from faculty and regular notification of additions.

(9) The library shall be accessible to faculty and students on a regular, scheduled basis.

*§230.159. Standard IX. Financial Support for Teacher Education. Standard.*

The institution shall provide adequate financial support for sustaining its approved programs for professional education at an effective level.

§230.160. *Standard X. Collaborative Planning and Review Processes.*

(a) Standard. The institution shall provide a process for collaborative planning and review of teacher education programs.

(b) Quality indicators.

(1) The planning and review process for teacher education programs shall involve representatives of the practicing profession including public school teachers and administrators, faculties in professional and academic discipline areas for which the institution is approved, and students and graduates of the program.

(2) The institution shall maintain active membership in a local cooperative teacher education center in accordance with Subchapter D of this chapter (relating to Local Cooperative Teacher Education Centers).

(3) The initiative for organization of local cooperative teacher education centers shall be the responsibility of the professional education unit of the institution. The organization of the local cooperative teacher education centers shall be based upon a written agreement among participating members.

(4) The institution shall provide for internal collaborative review and advisement regarding teacher education programs which involves faculty representation from approved programs and students enrolled in the teacher education program.

§230.161. *Standard XI. Evaluation for Quality Control.*

(a) Standard. The institution shall have a process for evaluation of its teacher education organizational and policy structure, administrative processes, financial support, faculty performance, student services, programs and curriculum facilities and resources, collaborative activities, and evaluative systems. The quality of each program shall be judged by the success of its graduates, test results, and teacher appraisal, using an accountability system that includes performance of graduates and peer review of institutions and programs.

(b) Quality indicators.

(1) The evaluation process shall include a procedure for collecting information from faculty, students, public school educators, graduates, and others concerning the teacher education program.

(2) The institution shall provide for a continuous and systematic process of follow-up and evaluation of its teacher education graduates.

(3) The continuous planning, review, and development of the teacher education program shall respond to needs identified through the evaluation process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter G. Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements

**19 TAC §§230.191-230.199**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048 and 21.050 which require the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification as well as the classes of certificates offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

§230.191. *Preparation Required in All Programs.*

(a) The teacher education program standards in this subchapter are minimum requirements.

(b) The teacher education program shall provide a degree structure of at least the baccalaureate level with an academic major or interdisciplinary academic major including reading and related to the subjects listed in the required curriculum under the Texas Education Code (TEC) §28.002(a). The curriculum shall include at least the following three dimensions of curricula:

(1) general education;

(2) teaching specialty designed for Texas public school instruction; and

(3) professional studies program designed for specific roles in public school teaching.

(c) All teacher education programs must be directed toward a high quality, well-rounded education that includes a grasp of the humanities, the natural and social sciences, mathematics, and fine arts. It is particularly important that candidates for certification be able to communicate in clear, correct English. The general education curriculum shall apply to all teacher certificates, special education certificates, and the vocational certificates that are based on an approved teacher education program in a Texas senior college. Specialization in one or more academic areas shall be built upon the general education curriculum. The general education curricula shall include the following.

(1) General education requirements are 60 semester hours, including courses from the following areas:

(A) English (six semester hours must emphasize skills in mechanics and composition) – 12 semester hours;

(B) speech (must emphasize oral language proficiency) – three semester hours or demonstration of competency;

(C) American history – six semester hours;

(D) political science (study of United States and Texas Constitutions). The coursework shall be completed in a government or political science department or by examination. Study of the Texas Constitution shall be completed in a Texas institution – three-six semester hours;

(E) natural science (laboratory) – three semester hours;

(F) mathematics (at content level of college algebra or above) – three semester hours;

(G) computing and information technology (including societal and ethical implications, and proficiency in use as productivity tools) – three semester hours or a demonstration of competency; and

(H) fine arts – three semester hours.

(2) Each institution shall provide a minimum of nine semester hours of electives from the following areas:

(A) humanities;

(B) social science;

(C) natural science;

(D) mathematics;

(E) other languages (foreign languages); and

(F) fine arts.

(d) The teacher education program shall include academic specializations and teaching fields in subjects approved to be taught in the public schools of Texas or delivery systems authorized by the State Board of Education (SBOE) under the Texas Education Code (TEC) §28.002(b), for use in the public schools of Texas.

(1) The program shall include at least the essential knowledge and skills adopted by the SBOE under the Texas Education Code (TEC) §28.002(c)-(d).

(2) Within the curriculum sequence for each academic specialization, teaching field, or delivery system, the institution shall provide instructional components in response to academic program descriptors adopted by the State Board for Educator Certification (SBEC).

(3) The institution shall be responsible for expanding and enriching the curriculum beyond the required essential knowledge and skills for each academic specialization, teaching field, or delivery system, through a balanced program that capitalizes upon the best academic talents of the institution to meet the unique needs of prospective teachers.

(4) For the teacher certificates, each academic specialization, teaching field, and delivery system shall comply with one or more of the options in this paragraph. In accordance with the Texas Education Code (TEC) §21.050(b), additional semester hours in education are permissible for certification in bilingual education, English as a second language, early childhood education, and special education. For the teacher certificate-elementary, six semester hours of upper-division courses in reading shall be included in each option unless reading is selected as an academic specialization. For all other certificates based on college-approved teacher education programs, reading shall be included in the approved program. Reading instruction shall be developmental and corrective and include study relating to the phonetic structure of the English language; knowledge of reading instruction such as language-based, phonics-based, and meaning-based instruction; demonstration and application of reading theories; and identification of and teaching strategies and resources for dyslexia and other reading disorders. Reading courses that fulfill these requirements may be offered beyond the 18 semester hours of professional development courses.

(A) The options for teacher certificate-elementary include the following.

(i) Option I (Grades 1-6) requires:

(I) two 12-semester-hour (including six semester hours of upper-division courses in each area) academic specializations; and

(II) 12 semester hours in a combination of subjects taught in elementary grades. Six semester hours of upper-division courses in reading must be included unless reading is selected as an academic specialization.

(ii) Option II (Grades 1-8) requires:

(I) one 18-semester-hour (including nine semester hours of upper-division courses) academic specialization; and

(II) 18 semester hours in a combination of subjects taught in elementary grades. Six semester hours of upper-division courses in reading must be included unless reading is selected as the academic specialization.

(iii) Option III (Grades 1-8, except for the delivery system in generic special education that is valid for assignment to school settings with students identified as having special needs in prekindergarten - Grade 12) requires:

(I) one 24-semester-hour (including 12 semester hours of upper-division courses) delivery system or academic specialization in life-earth science, physical science, or social studies; and

(II) six semester hours in a combination of subjects taught in elementary grades and six semester hours of upper-division courses in reading.

(iv) Option IV (prekindergarten-Grade 6) requires:

(I) one 24-semester-hour (including 12 semester hours of upper-division courses) delivery system emphasizing instructional areas designed for early childhood education; and

(II) six semester hours in a combination of subjects taught in elementary grades and six semester hours of upper-division courses in reading.

(B) The options for teacher certificate-secondary include the following.

(i) Option I (Grades 6-12) requires one 36-semester-hour (including 21 semester hours of upper-division courses) teaching field, with an additional 12 semester hours in a directly supporting field(s).

(ii) Option II (Grades 6-12) requires two 24-semester-hour (including 12 semester hours of upper-division courses in each) teaching fields, delivery systems, or a combination of a teaching field and a delivery system.

(iii) Option III (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) broad teaching field.

(iv) Option IV (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses, 12 of which are in a single area) composite teaching field. A minimum of six semester hours shall be required in each area.

(C) The options for teacher certificate-all-level include the following.

(i) Option I (prekindergarten-Grade 12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level.

(ii) Option II (prekindergarten-Grade 12) requires one 36-semester-hour (including 18 semester hours of upper-division courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level. Option II is only available for the physical education academic specialization.

(e) At the baccalaureate level, the professional development sequence for the initial teacher certificate shall consist of 18 semester hours of upper-division courses. The following three components must be included.

(1) Core requirements common to all grade level options include studies of:

(A) teaching-learning processes, including measurement and evaluation of student achievement;

(B) human growth and development;

(C) knowledge and skills concerning the unique needs of special learners, such as:

(i) multicultural education: the impact of cultural, ethnic, language, and social differences upon instructional processes;

(ii) the characteristics, assessment, least restrictive alternatives, and admission, review, and dismissal processes for students requiring individualized or specialized education programs; and

(iii) the characteristics, identification, and needs of gifted and talented students;

(D) legal and ethical aspects of teaching to include the recognition of and response to signs of abuse and neglect in children;

(E) structure, organization, and management of the American school system, with emphasis upon the state and local structure in Texas; and

(F) educational computing, media, and other technologies.

(2) Methodology requirements specifically designed for the grade level option selected shall include studies of the following:

(A) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;

(B) curriculum organization, planning, and evaluation;

(C) basic principles and procedures of classroom management with emphasis on classroom discipline, using group and individual processes as well as different techniques and procedures adapted to the personality of the teacher; and

(D) the scope and sequence of the essential knowledge and skills for all subjects required in the elementary course of study

that are not included in the academic specializations when elementary options are selected.

(3) Field experience requirements that provide for the application of teaching-learning theories shall include the following.

(A) Pre-student teaching experiences. A planned sequence of 45 clock hours in field experiences shall be a prerequisite for admission to student teaching.

(i) Pre-student teaching field experiences shall include observing and working with children or youth in a school or schools accredited by the Texas Education Agency under the Texas Education Code (TEC) §39.073.

(ii) At least one-half of the pre-student teaching field experiences shall include observation and experience at a level for which a student teaching assignment is anticipated.

(iii) Option IV for the elementary certificate shall include observation of interaction experiences with children, parents, and families in a variety of settings and from a variety of socioeconomic and cultural backgrounds. The program shall require a minimum of 60 clock hours in field experiences as a prerequisite for admission to student teaching.

(B) Student teaching. The institution shall provide for each qualified student a student teaching experience involving a period of major responsibility for instruction and learning in the school classroom environment. Student teaching should verify student performance capabilities developed through prior components of the teacher education program. Notwithstanding any requirements mandated in this paragraph, an institution may design a variety of experiences and formats for student teaching. Student teaching programs differing from the ones herein specified must be approved by the SBEC.

(i) When determining credit under this chapter for student teaching requirements, definitions for "one year" and "full day" shall be consistent with the Texas Education Code (TEC) §§25.081(a) and 25.082(a).

(ii) Student teaching shall occur in a school or schools accredited by the Texas Education Agency under the Texas Education Code (TEC) §39.073, and shall be designed in compliance with this subchapter.

(I) Admission to and retention in student teaching shall be restricted to students who have met and continue to meet performance standards established by the institution.

(II) The number of student teachers assigned to a school or school district shall be limited by the availability of qualified supervising classroom teachers. No more than one student teacher shall be assigned to a supervising teacher during any one time period.

(III) Student teaching shall be supervised by both the institution and the school district to guarantee that the needs of students in the learning situation are met.

(IV) An institution may design a variety of experiences in student teaching that meet unique needs of students and programs.



(V) Student teachers should maintain the same daily schedule and calendar required of the public school supervising teachers to whom they are assigned.

(iii) Student teaching shall be a minimum of six semester hours credit earned in a minimum of 10 consecutive weeks of full-day assignments in accordance with the criteria in this clause.

(I) Elementary student teaching (Grades 1-8).

(-a-) For academic specializations (Options I, II, or III), student teaching shall be ten weeks of full days in an elementary classroom.

(-b-) For academic specializations with additional endorsements (Options I, II, or III), student teaching shall be five weeks of full days in an elementary classroom and five weeks of full days in the endorsement area.

(-c-) For delivery systems (Option III), student teaching shall be 10 weeks of full days in an elementary classroom with students having identified special needs.

(-d-) For delivery systems (Option III) with additional endorsements, student teaching shall be five weeks of full days in an elementary classroom with students having identified special needs and five weeks of full days in the area of the additional endorsement.

(-e-) For delivery system (Option IV), student teaching shall be five weeks of full days in an elementary classroom (Grades 1- 6) and five weeks of full days in an early childhood classroom (kindergarten or below).

(-f-) For delivery system (Option IV) with endorsement, an additional student teaching experience of at least five weeks of full days in the endorsement area shall be required.

(-g-) If appropriate, student teaching assignments may be concurrent, when an endorsement is involved.

(II) Secondary student teaching (Grades 6-12).

(-a-) For Option I, Option III, and vocational agriculture, home economics, and marketing education, student teaching shall be ten weeks of full days in the single teaching field for which certification is sought.

(-b-) If student teaching is required for an endorsement to be added to Option I, Option III, and vocational agriculture, home economics, and marketing education, student teaching shall be five weeks of full days in the certificate area and five weeks of full days in the endorsement area.

(-c-) For Option II or Option IV, student teaching shall be ten weeks of full days with experience in each of two teaching fields for which certification is sought.

(-d-) If student teaching is required for an endorsement to be added to Option II or Option IV, student teaching shall be five weeks of full days in one teaching field area and five weeks of full days in the endorsement area. When a delivery system is selected under Option II, secondary student teaching shall be a minimum of five weeks of full days in one teaching field with students having identified special needs and five weeks of full days in the endorsement area.

(III) All-level (prekindergarten-Grade 12) and hearing impaired student teaching.

(-a-) For all-level certificates, student teaching shall be a minimum of five weeks of full days in an elementary school (prekindergarten-grade eight) and five weeks of full days in a secondary school (Grades 6-12) in the certificate area sought.

(-b-) For the hearing impaired certificates, student teaching shall be a minimum of five weeks of full days in an elementary school (prekindergarten-grade eight) and five weeks of full days in a secondary school (Grades 6-12) in the certificate area sought.

(-c-) If student teaching is required for an endorsement to be added to one of these certificates, an additional student teaching experience of at least five weeks of full days in the endorsement area shall be required.

(iv) Student teaching may be waived if the student has served successfully for two years in an accredited school as a regular classroom teacher of record in the area and at the level for which certification is sought.

(f) The professional development sequence for the teacher certificate-all-level shall include a minimum of three semester hours designed for the elementary level and three semester hours designed for the secondary level.

(g) The institution shall provide a procedure whereby exceptions to the requirements in this subchapter for individual students can be evaluated, approved, and documented by the head of the professional education unit after consultation with the appropriate faculty in approved areas of general education, academic specializations, teaching fields, endorsements, or professional development.

#### *§230.192. Teacher Certificate-Elementary.*

(a) The teacher certificate-elementary shall be based upon completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs).

(b) Approved academic specializations and delivery systems are listed in the table in this subsection.  
Figure: 19 TAC §230.192(b)

#### *§230.193. Teacher Certificate-Secondary.*

(a) The teacher certificate-secondary shall be based upon completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs).

(b) Approved teaching fields and delivery systems are listed in the table in this subsection.  
Figure: 19 TAC §230.193(b)

#### *§230.194. Teacher Certificate-All-Level.*

The teacher certificate-all-level shall be based upon completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs). Areas of academic specialization for the teacher certificate-all-level shall be:

- (1) art;
- (2) music;
- (3) physical education;
- (4) speech communications-theatre arts; and
- (5) theatre arts.

#### *§230.195. Special Education Certificates.*

(a) The special education certificates shall be based upon completion of a teacher education program as described in §230.191(a), (b), and (c)(1) and (2) of this subchapter (relating to Preparation Required in All Programs). In accordance with the

Texas Education Code (TEC), §21.050(b), additional semester hours in education are permissible for certification in special education. Hearing impaired specialization shall prepare the individual to teach prekindergarten through grade 12 in programs designed to serve the hearing impaired and shall require 36 semester hours in courses specifically designed for teaching the deaf and severely hard of hearing, including:

- (1) survey of special education;
- (2) foundations of education for the deaf (history of education of the deaf, psychology of deafness, the state curriculum for the deaf, and the legal aspects of education for the deaf);
- (3) audiology (auditory training and testing and speech reading);
- (4) speech for the deaf;
- (5) language for the deaf;
- (6) manual communication (finger spelling, signed English, and American Sign Language);
- (7) teaching reading to the deaf; and
- (8) pre-student teaching experiences with deaf children in settings where the state curriculum for the deaf is being used.

(b) The professional development sequence for special education certificates shall consist of 18 semester hours of upper-division courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and related disorders and other reading disorders. The following three components must be included.

- (1) Core requirements common to all grade levels shall include §230.191(e)(1) of this subchapter (relating to Preparation Required in All Programs).
- (2) Methodology requirements specifically designed for both the elementary and secondary grade levels shall include §230.191(e)(2) of this subchapter.
- (3) Field experience requirements that provide for the application of teaching-learning theories shall include the following.

(A) Pre-student teaching experiences. A planned sequence of not fewer than 45 clock hours in field experience shall be a prerequisite for admission to student teaching.

(i) Pre-student teaching field experiences shall include observing and working with elementary and secondary school children in a school or schools accredited by the Texas Education Agency.

(ii) Pre-student teaching field experiences shall be in the area of the special education certificate sought.

(B) Student teaching. The institution shall provide for each student a student teaching experience involving a period of major responsibility for instruction and learning in the school classroom environment in the area of the certificate sought. Student teaching should verify student performance capabilities developed through prior components of the teacher education program.

(i) Student teaching shall occur in a school or schools accredited by the Texas Education Agency and shall be designed in compliance with this subchapter.

(ii) Student teaching shall be a minimum of six semester hours credit earned in no fewer than ten weeks of full day assignments.

*§230.196. Vocational Agriculture Certificates.*

(a) The vocational agriculture certificate shall be based on completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs). The program shall include at least one of the following specializations:

- (1) production agriculture; or
- (2) ornamental horticulture.

(b) The specialization in production agriculture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture as follows:

- (1) agricultural economics – three semester hours;
- (2) animal science – nine semester hours;
- (3) soil and plant science – nine semester hours;
- (4) agricultural engineering – nine semester hours; and
- (5) scientific agriculture electives – 18 semester hours.

(c) The specialization in ornamental horticulture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture. The program shall include the following areas:

- (1) agricultural economics;
- (2) genetics (plant reproduction);
- (3) greenhouse and nursery management;
- (4) plant nutrition;
- (5) plant pathology;
- (6) plant physiology;
- (7) plant and soil science; and
- (8) taxonomy of flowering plants.

(d) The professional development sequence shall consist of 18 semester hours of upper-division courses in three component areas. No more than nine semester hours, including student teaching, of the professional development sequence may be completed in vocational agriculture education courses. Reading, which may be offered beyond the 18 semester hours of professional development, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(e)(1) of this subchapter.

(2) Methodology requirements shall include, but need not be limited to:

- (A) adult and young farmer education;
- (B) youth leadership development and activities;

- (C) supervision of occupational experience programs;
- (D) history, principles, and foundations of vocational education in agriculture;
- (E) advisory councils for vocational agriculture;
- (F) special needs of students in vocational agriculture;
- (G) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;
- (H) curriculum organization, planning, and evaluation; and
- (I) basic principles and procedures of classroom management with emphasis on classroom discipline, using group processes as well as different techniques and procedures adapted to the personality of the teacher.

(3) Field experience requirements shall provide for the application of teaching-learning theories and include:

(A) Pre-student teaching experiences. A planned sequence of not fewer than 45 clock hours in field experiences shall be a prerequisite for admission to student teaching.

(i) Pre-student teaching field experiences shall include observing and working with secondary school children in a school or schools accredited by the Texas Education Agency under the Texas Education Code (TEC), §39.073.

(ii) Pre-student teaching experiences shall be in the area of the vocational certificate sought.

(B) Student teaching. The institution shall provide for each student a student teaching experience involving a period of major responsibility for instruction and learning in the school classroom environment. Student teaching should verify student performance capabilities developed through prior components of the teacher education program.

(i) Student teaching shall occur in a school or schools accredited by the Texas Education Agency and shall be designed in compliance with this subchapter.

(ii) Student teaching shall be a minimum of six semester hours credit earned in no fewer than ten weeks of full day assignments.

(e) Additional requirements for assignment to specialized programs in vocational agriculture are described in this chapter.

(f) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field and, if taken concurrently, complete ten weeks of student teaching, with the amount in each field to be determined by the institution.

*§230.197. Vocational Home Economics Certificates.*

(a) The vocational home economics certificate shall be based on completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs).

(b) Academic preparation for the vocational home economics certificate shall consist of 48 semester hours (24 semester hours upper-division courses) of home economics, which must include:

- (1) clothing and textiles – 6-12 semester hours;

- (2) food and nutrition – 6-12 semester hours;
- (3) home management, family economics, and consumer education – 9-12 semester hours;
- (4) housing (including art related to the home) – six-nine semester hours;
- (5) human development and the family (including child development, family relations, personal development, home care of the sick, and individuals with special needs) – 9-12 semester hours; and

(6) occupational home economics (including competencies in industrial sewing, commercial food service, industrial home management, and child care) – six-nine semester hours.

(c) The professional development sequence shall consist of 18 semester hours of upper-division courses in three component areas. No more than nine semester hours, including student teaching, of the professional development sequence may be completed in vocational home economics education courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(e)(1) of this subchapter.

(2) Methodology requirements shall include §230.191(e)(2)(A)-(C) of this subchapter.

(3) Field experience requirements shall provide for the application of teaching-learning theories and shall include the following.

(A) Pre-student teaching experiences. A planned sequence of not fewer than 45 clock hours in field experiences shall be a prerequisite for admission to student teaching.

(i) Pre-student teaching field experiences shall include observing and working with secondary school children in a school or schools accredited by the Texas Education Agency under the Texas Education Code (TEC), §39.073.

(ii) Pre-student teaching experiences shall be in the area of the vocational certificate sought.

(B) Student teaching. The institution shall provide for each student a student teaching experience involving a period of major responsibility for instruction and learning in the school classroom environment. Student teaching should verify student performance capabilities developed through prior components of the teacher education program.

(i) Student teaching shall occur in a school or schools accredited by the Texas Education Agency and shall be designed in compliance this subchapter.

(ii) Student teaching shall be a minimum of six semester hours credit earned in no fewer than ten weeks of full day assignments.

(d) Additional requirements for assignment to specialized programs in vocational home economics are described in this chapter.

(e) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field and,

if taken concurrently, complete ten weeks of student teaching, with the amount in each field to be determined by the institution.

*§230.198. Vocational Marketing Education Certificates.*

(a) The vocational marketing education certificate shall be based upon completion of a teacher education program as described in §230.191 of this subchapter (relating to Preparation Required in All Programs).

(b) Academic preparation and work experience required for the vocational marketing education certificate shall consist of:

(1) 48 semester hours (24 semester hours upper-division courses) that include the following:

- (A) introduction to business;
- (B) business communication;
- (C) business law;
- (D) elementary accounting;
- (E) statistics;
- (F) retailing;
- (G) marketing;
- (H) principles of management;
- (I) principles of advertising; and
- (J) salesmanship; and

(2) two years of wage-earning experience approved by the teacher education institution in one or more of the marketing occupations or one year of wage-earning experience in addition to 1,000 clock hours of employment experience supervised by the approved teacher education institution.

(c) The professional development sequence shall require 18 semester hours of upper-division courses in three component areas. No more than nine semester hours, including student teaching, of the professional development sequence may be completed in vocational marketing education courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(e)(1) of this subchapter.

(2) Methodology requirements shall include §230.191(e)(2)(A)-(C) of this subchapter.

(3) Field experience requirements shall provide for the application of teaching-learning theories and include the following.

(A) Pre-student teaching experiences. A planned sequence of not fewer than 45 clock hours in field experiences shall be a prerequisite for admission to student teaching.

(i) Pre-student teaching field experiences shall include observing and working with secondary school children in a school or schools accredited by the Texas Education Agency under the Texas Education Code, (TEC), §39.073.

(ii) Pre-student teaching experiences shall be in the area of the vocational certificate sought.

(B) Student teaching. The institution shall provide for each student a student teaching experience involving a period of major responsibility for instruction and learning in the school classroom environment. Student teaching should verify student performance capabilities developed through prior components of the teacher education program.

(i) Student teaching shall occur in a school or schools accredited by the Texas Education Agency and shall be designed in compliance this subchapter.

(ii) Student teaching shall be a minimum of six semester hours credit earned in no fewer than ten weeks of full day assignments.

(d) Additional requirements for assignment to specialized programs in vocational marketing education are described in this chapter.

(e) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field and, if taken concurrently, complete ten weeks of student teaching, with the amount in each field to be determined by the institution.

*§230.199. Endorsements.*

(a) Classification of endorsements. Endorsements to Texas teacher certificates shall be classified into delivery system areas and special service areas.

(b) Requirements for endorsements. Requirements for endorsements shall include the following unless otherwise specified:

(1) bachelor's degree from an accredited institution;

(2) valid, designated Texas teacher certificate; and

(3) completion of approved program requirements for the endorsement sought.

(c) Program requirements for endorsement in delivery system areas.

(1) Bilingual education.

(A) Certificate requirements. The bilingual education endorsement may be added to valid teacher certificates, special education certificates, or vocational certificates that require a college degree.

(B) Professional development. The professional development sequence for the bilingual education endorsement shall consist of:

(i) 12 semester hours at the graduate or undergraduate level earned after the bachelor's degree in the following areas:

(I) language acquisition and development in childhood (psycholinguistics);

(II) teaching language arts and reading in the language of the target population;

(III) teaching English as a second language, including reading and oral communication; and

(IV) teaching mathematics, science, and social studies in the language of the target population; and

(ii) one year of successful classroom teaching experience on a permit in an approved bilingual education program.

(2) Early childhood education (prekindergarten - kindergarten).

(A) Certificate requirements. The early childhood education endorsement may be added to valid elementary teacher certificates, special education certificates, or vocational home economics certificates that require a college degree.

(B) Professional development. The professional development sequence for the early childhood education endorsement shall consist of an integrated sequence of 12 semester hours, including:

(i) studies of:

(I) child development including both normal and exceptional development;

(II) communication skills emphasizing oral language development and literacy;

(III) cultural diversity of learners and families;

(IV) organization of the classroom and management of the learning environment;

(V) management of student behavior;

(VI) organization of the curriculum and implementation of the essential knowledge and skills, adopted by the State Board of Education under the Texas Education Code (TEC), §28.002(c)-(d), at the appropriate level for the target population;

(VII) diagnosis and evaluation of learning needs, affective, cognitive, and motor; and

(VIII) parental involvement; and

(ii) field experiences, including:

(I) preservice or pre-student teaching, including prekindergarten and kindergarten settings that involve a variety of cultural and socioeconomic conditions; and

(II) three semester hours of student teaching in prekindergarten and/or kindergarten settings with certified early childhood supervising teachers in a school accredited by the Texas Education Agency under the Texas Education Code (TEC), §39.073, or one year of successful prekindergarten or kindergarten classroom teaching experience in a school accredited by the Texas Education Agency.

(3) Early childhood – handicapped

(A) Certificate requirements. The early childhood-handicapped endorsement may be added to a valid Texas elementary certificate, teacher of young children certificate, special education certificate, all-level certificate, vocational home economics certificate that requires a bachelor's degree, or early childhood education or kindergarten endorsement.

(B) Professional development. The professional development sequence for the early childhood-handicapped endorsement shall consist of:

(i) nine semester hours including, but not limited to, studies of:

(I) infant/child development including both normal and exceptional development;

(II) communication skills emphasizing oral language development and literacy;

(III) cultural diversity of learners and families;

(IV) organization of the classroom and management of the learning environment;

(V) behavior management;

(VI) organization of the curriculum and implementation of the essential knowledge and skills at the appropriate level;

(VII) diagnosis and evaluation of learning needs, affective, cognitive, and motor; and

(VIII) parental involvement;

(ii) nine semester hours directly related to teaching students (ages 0-eight) with handicaps including, but not limited to:

(I) general orientation to special education;

(II) medical aspects of serving young children with handicaps;

(III) methods and technology;

(IV) transition from infant to early childhood programs; and

(V) interagency coordination; and

(iii) three semester hours of student teaching with handicapped children ages 0- eight; or one year of successful teaching experience on a permit in an early childhood for the handicapped classroom in a school accredited by the Texas Education Agency.

(C) ExCET requirement; Early Childhood (14).

(4) Generic special education.

(A) Certificate requirements. The generic special education endorsement may be added to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree.

(B) Professional development. The professional development sequence for the generic special education endorsement shall consist of:

(i) 18 semester hours directly related to teaching students with handicaps, including, but not limited to:

(I) infant/child and adolescent development;

(II) task analysis;

(III) motor development/adaptive physical education;

(IV) parent training;

(V) oral language development;

(VI) adaptation; modification of instructional methods and materials;

(VII) behavior management;

(VIII) classroom management;

(IX) survey of special education;

- (X) assessment, diagnosis, and remediation;
  - (XI) vocational, transition, and related secondary issues, such as interagency coordination;
  - (XII) concepts of integration and least restrictive environment;
  - (XIII) consultation techniques; and
  - (XIV) classroom observation; and
- (ii) three semester hours of student teaching with special education students; or one year of successful experience on a permit working with special education students.

(C) ExCET requirement; Generic Special Education (37).

(5) Seriously emotionally disturbed and autistic.

(A) Certificate requirements. The seriously emotionally disturbed and autistic endorsement may be added to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree.

(B) Professional development. The professional development sequence for the severely emotionally disturbed and autistic endorsement shall consist of:

(i) nine semester hours, including, but not limited to, studies of the following (Note: Personnel having a generic special education endorsement or delivery system are exempt from the nine semester hours described in this clause):

- (I) infant/child and adolescent development;
- (II) diagnosis and classroom assessment;
- (III) behavior management;
- (IV) parent training;
- (V) consultation procedures;
- (VI) communication/language development;
- (VII) classroom management;
- (VIII) survey of special education;
- (IX) task analysis;
- (X) motor development and adaptive physical education;
- (XI) vocational, transition, and related secondary issues; and
- (XII) crisis intervention and management of violent behavior;

(ii) nine semester hours directly related to teaching the seriously emotionally disturbed and autistic, including, but not limited to:

- (I) medical aspects;
- (II) interdisciplinary coordination;
- (III) curriculum development;
- (IV) systematic instruction; and
- (V) classroom observation; and

(iii) three semester hours of student teaching with the seriously emotionally disturbed or autistic; or one year of successful experience on a permit teaching the seriously emotionally disturbed or autistic.

(C) ExCET requirement: Severely Emotionally Disturbed and Autistic (38).

(6) Severely and profoundly handicapped.

(A) Certificate requirements. The severely and profoundly handicapped endorsement may be added to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree.

(B) Professional development. The professional development sequence for the severely and profoundly handicapped endorsement shall consist of:

(i) nine semester hours, including, but not limited to studies of the following (Note: Personnel having a generic special education endorsement or delivery system are exempt from the nine semester hours described in this clause):

- (I) infant/child and adolescent development;
- (II) task analysis;
- (III) parent training;
- (IV) motor development/adaptive physical education;
- (V) oral language development;
- (VI) behavior management;
- (VII) classroom management;
- (VIII) assessment/diagnosis;
- (IX) secondary issues such as vocation preparation and transition, such as collaboration with other agencies;
- (X) crisis intervention and management of violent behavior;
- (XI) consultation techniques;
- (XII) concepts of integration and least restrictive environment; and
- (XIII) use of adaptive/assistance devices;

(ii) nine semester hours directly related to teaching the severely and profoundly handicapped, including, but not limited to:

- (I) medical aspects;
- (II) interdisciplinary coordination;
- (III) curriculum development;
- (IV) systematic instruction; and
- (V) classroom observation; and

(iii) three semester hours of student teaching or one year of successful experience on a permit teaching the severely and profoundly handicapped, including, but not limited to, deaf/blind children, in a Texas Education Agency accredited or approved school, agency, or institution.

(C) ExCET requirement: Severely and Profoundly Handicapped (37).

(7) Visually handicapped.

(A) Certificate requirement. The visually handicapped endorsement may be added only to special education certificates or to elementary or secondary teacher certificates.

(B) Professional development. The professional development sequence for the visually handicapped endorsement shall consist of:

(i) 21 semester hours directly related to teaching the visually handicapped that must include, but need not be limited to:

(I) physiological, psychological, and social factors of blindness;

(II) literary braille (grade II);

(III) special braille notations (including nemeth code, braille music, scientific notation, formal and foreign language);

(IV) media, materials, and adaptations;

(V) methods of instruction (including low vision, orientation and mobility, vocational and career exploration, and multihandicapped);

(VI) assessment and programming;

(VII) intervention and parent training; and

(VIII) survey of exceptional children; and

(ii) three semester hours of a practicum working with the visually handicapped; or one year of successful experience on a permit teaching the visually handicapped, and three additional semester hours directly related to teaching the visually handicapped.

(C) ExCET requirement: Visually Handicapped.

(8) Gifted and talented.

(A) Certificate requirement. The all-level gifted and talented endorsement may be added to a valid initial teacher certificate that requires a college degree.

(B) Professional development. The professional development sequence for the gifted and talented endorsement shall consist of:

(i) 12 semester hours to include, but not limited to, the following areas:

(I) nature and needs of the gifted and talented;

(II) identification and assessment of gifted and talented students;

(III) methods, materials, and curriculum for gifted and talented students;

(IV) counseling and guidance of gifted and talented students; and

(V) creativity: theories, models, and applications; and

(ii) three semester hours of practicum experience or two years of successful classroom teaching experience in a program for gifted and talented students.

(d) Program requirements for endorsements in special service areas.

(1) English as a second language (ESL).

(A) Certificate requirement. The ESL endorsement may be added to valid teacher certificates, special education certificates, or vocational education certificates that require a college degree.

(B) Professional development. The professional development sequence for the ESL endorsement shall consist of:

(i) 12 semester hours, including:

(I) language acquisition and development (psycholinguistics);

(II) methods of teaching ESL; and

(III) descriptive/contrastive linguistics; and

(ii) evidence of a successful student teaching experience in an approved ESL program. The requirement for student teaching may be waived with one year of successful classroom teaching experience on a permit in an approved ESL or bilingual education program.

(2) Learning resources.

(A) Certificate requirement. The learning resources endorsement may be added to valid teacher certificates, special education certificates, or vocational education certificates that require a college degree.

(B) Professional development. The professional development sequence for the learning resources endorsement shall consist of:

(i) 18 semester hours (including 12 semester hours of upper-division courses) that include the following areas:

(I) selection, evaluation, and acquisition of materials in all formats, including multicultural, multiethnic, and multimedia materials;

(II) processing and organization of a unified collection of materials;

(III) instructional design and development;

(IV) learning resources center organization and administration;

(V) local production of instructional materials;

(VI) instructional materials for children and young adults and utilization practices including computer hardware and software; and

(VII) reference and bibliography; and

(ii) three semester hours of a practicum working in a learning resources center. The requirement for three semester hours of a practicum may be waived for students with one year of successful experience on a permit as a full-time public school librarian, and three additional semester hours directly related to learning resources.

(3) Information processing technologies.

(A) Certification requirement. The information processing technologies endorsement may be added to valid teacher cer-

tificates, special education certificates, or vocational education certificates that require a college degree.

(B) Professional development, level one. The professional development sequence for the information processing technologies, level one endorsement shall:

(i) consist of at least nine semester hours (six semester hours upper-division courses) directly related to information processing; and

(ii) include, but not be limited to, the following content:

(I) background information concerning information processing technology and its use in education (including at least terminology, applications, ethics, impact on society and education, hardware configurations, future trends, historical development, and basic system architecture);

(II) operational skills and familiarity with current information processing tools (including at least tools used for word processing; information storage, retrieval and display; numerical computation, analysis, planning and reporting; transmission of information; graphics production and display; design and manufacturing; and emerging information processing tasks);

(III) methodology for instruction in concepts and skills of information processing (including at least strategies for delivery of concepts and skills, mastery evaluation techniques, methods of modifying curriculum for special students, automated management strategies, teaching methods for keyboarding instruction, techniques for evaluation of software and courseware, and facility management and maintenance); and

(IV) modern programming with experience in at least one language (including at least experience in solving problems using computer programming; application of a program development cycle; program structure, modular design and style; and in-depth coverage of syntax, format, and common use of one primary high-level programming language).

(C) Professional development, level two. The professional development sequence for the information processing technologies, level two endorsement shall:

(i) consist of at least 15 semester hours (six semester hours upper-division courses) directly related to information processing; and

(ii) include, but not be limited to, the following content:

(I) background information concerning information processing technology and its use in education (including at least terminology, applications, ethics, impact on society and education, hardware configurations, future trends, historical development, and basic system architecture);

(II) operational skills and familiarity with current information processing tools (including at least tools used for word processing; information storage, retrieval and display, numerical computation, analysis, planning and reporting; transmission of information; graphics production and display; design and manufacturing; and emerging information processing tasks);

(III) methodology for instruction in concepts and skills of information processing (including at least strategies for delivery of concepts and skills, mastery evaluation techniques, methods of modifying curriculum for special students, automated management strategies, teaching methods for keyboarding instruction, techniques for evaluation of software and courseware, and facility management and maintenance);

(IV) modern programming with experience in at least two languages (including at least experience solving problems using computer programming; application of a program development cycle; program structure, modular design and style; in-depth coverage of syntax, format and common uses of one primary high-level programming language; and contrast of a second programming language with the first); and

(V) technology-based delivery and management of instruction (including at least techniques and concepts of technology-based instruction, systems for automated management of instruction, comprehensive systems, involving both delivery and management, educational applications of artificial intelligence, authoring systems, multitechnology instructional systems, and survey of other promising technology-based systems).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Executive Director

State Board for Educator Certification

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## Subchapter H. Alternative Certification of Teachers

### 19 TAC §230.231

This section is proposed under Texas Education Code (TEC), §21.049, which requires the State Board for Educator Certification to propose rules providing for alternative certification programs.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.231. Requirements for the Alternative Certification of Teachers.*

(a) General provisions. Approval of alternative certification of teachers by the State Board for Educator Certification (SBEC) is based on the following requirements.

(1) Alternative certification of teachers shall be a collaborative program among public schools, regional education service centers (ESC), and institutions of higher education and delivered through Texas public schools.

(2) The collaborative entities shall develop and implement a comprehensive field-based teacher preparation program based on



the state-approved proficiencies for teachers, content competencies, current research, and best practice.

(3) The collaborative program shall have internal and external assessment procedures that focus on attainment of the proficiencies, student learning, and continuous improvement of program content and delivery.

(4) The program administrator or the district superintendent shall recommend an individual for teacher certification to the SBEC based on satisfactory completion of requirements of the approved program.

(5) Certificates that may be earned through an alternative certification program include any certificate or endorsement for a teacher that may be earned through the completion of an approved teacher education program for which a bachelor's degree is required. The following additional certificate areas are unique to alternative certification: Grades prekindergarten-6 elementary education, Grades prekindergarten-6 elementary bilingual, Grades prekindergarten-12 English as a second language (ESL), and Grades prekindergarten-12 generic special education.

(6) An individual admitted into an alternative teacher certification program that has been approved under this section shall be issued a probationary certificate that is valid for one calendar year. The probationary certificate may be extended for only one additional year upon recommendation of the district superintendent and the program administrator. The district superintendent and the program administrator shall prescribe specific remediation for the additional year.

(b) Requirements for an approved plan. A collaborative that prepares teachers, as described in subsection (a)(1) of this section, must submit a collaboratively developed plan for SBEC approval before implementing the plan. The plan must address the following.

(1) Participating school districts, colleges, or universities must be accredited.

(2) The program shall address the educational needs of all children.

(3) A committee consisting of the major stakeholders shall assist and provide evidence of shared accountability in the design, delivery, evaluation, and major policy decisions of the program. The committee shall:

(A) include teachers, administrators, ESC staff, faculty and administrators from institutions of higher education;

(B) reflect the cultural diversity of the region served;

(C) require that the teacher representation reflect each certification area offered and that no one category of representation be larger than the K-12 teacher representation; and

(D) meet on a regular basis to review program design and implementation and make program refinements based on evaluation data.

(4) The plan must include a description of available resources and an approved program budget that indicates commitment through adequate funding for establishing, implementing, evaluating, and maintaining the program. The plan shall indicate the maximum number of interns to be admitted to the program to assess adequacy of resources allocated for program operation. The SBEC executive

director must approve any increase beyond the previously approved maximum number of interns to be admitted into the program.

(5) The plan must designate a program administrator with adequate, qualified staff to assure appropriate planning, screening, training, supervision, and assessment as indicated in a ratio of supervisors to interns. Lines of responsibility and communication with all entities involved must be clearly delineated.

(6) The plan must include a calendar of program activities for the duration of each school year for which the program is approved. The calendar must include a deadline for accepting candidates into a cycle to assure adequate time for preassignment screening and preassignment and ongoing training for interns.

(7) The alternative certification plan must provide evidence of:

(A) state-approved teacher proficiencies integrated throughout the preparation program;

(B) a comprehensive delivery system through which proficiencies are acquired;

(C) a variety of teaching and learning experiences integrated into the delivery system; and

(D) an ongoing, comprehensive performance assessment system for the teacher candidates.

(8) The program must include:

(A) a supervised internship of at least one calendar year under the mentorship of an experienced, certified teacher or teachers in the subject area or areas or at the level for which the intern is to be certified; and

(B) provisions for release from teaching duties on a regularly scheduled basis:

(i) for each intern to observe the teaching of the mentor teacher or other teachers and to confer with the mentor teacher; and

(ii) for each mentor teacher to observe, coach, and formatively assess the teaching of the intern.

(9) The program must provide for the selection, training, and support of mentor teachers.

(A) Selection criteria must include best practices for identifying mentor teachers.

(B) An orientation to the roles and responsibilities of mentoring shall be provided to each mentor upon assignment as a mentor and no later than the intern's first week of teaching. The mentor training program shall be delivered in a minimum of 12 hours and include best practices for supporting and assisting interns throughout the internship period. The training shall include the following areas: adult learners, stages of teacher growth and development, self-reliance and motivation, stress management, interpersonal skills, formative assessment strategies, counseling, peer coaching and direct support, communication with parents, school culture, and cultural diversity.

(C) The program plan shall provide a process for regularly scheduled times for each mentor to communicate with program staff to discuss the intern's performance and progress.

(10) The program plan must provide evidence of equity in recruiting and retaining interns, especially among underrepresented populations, and a system of ongoing counseling, guidance, and support for interns.

(11) The program plan must delineate a comprehensive method for screening, admission, training, evaluation of intern performance, and recommendation for certification.

(12) The plan must provide evidence of ongoing, internal and external program assessment used to assure quality and continuous improvement.

(13) Follow-up data that attest to program and intern effectiveness must be maintained.

(c) Requirements for admission, assignment, and certification. Each program must assure and document that an applicant meets the following minimum requirements for admission as an intern to the alternative teacher certification program.

(1) The program shall publish and disseminate specific admission and retention policies for program entry and internship, including academic and performance standards, as well as prerequisite field experience.

(2) Each applicant must hold a bachelor's or a higher level degree from an institution of higher education that was accredited or otherwise approved by a state department of education, a recognized governmental entity, or a recognized regional accrediting organization at the time the degree was conferred. Each applicant must have maintained a grade point average of no less than 2.50 on a four-point system on all semester hours attempted and on semester hours required for the certificate as specified in paragraph (5)(A)-(F) of this subsection.

(3) Applicants must possess basic skills in mathematics, reading, and writing as evidenced by acceptable scores on the state-mandated basic skills test; or the pre-professional skills test (P- PST) for out-of-state candidates.

(4) Applicants shall give evidence of state or national criminal record clearance before classroom assignment as interns.

(5) Applicants must have appropriate semester hours of transcript credit in a subject or combination of subjects to be taught and related to the certificate to be earned.

(A) For the Grades 6-12 secondary certificate, applicants must have 24 semester hours in a subject included in Chapter 75 of this title (relating to Curriculum) for the secondary level of assignment. Twelve semester hours must be upper division.

(B) For the Grades prekindergarten-6 elementary certificate, applicants must have 24 semester hours in a combination of subjects taught in the elementary school that must include English, mathematics, a natural science, and a subject in the social studies. Applicants shall have at least three semester hours in each of the four areas.

(C) For the Grades prekindergarten-6 elementary bilingual certificate, applicants must have evidence of oral and written proficiency on a validated test of English and the language of the target population for bilingual education assignments. In addition, applicants must have 24 semester hours in a combination of subjects taught in the elementary school that must include English, mathematics, a natural science, and a subject in the social studies.

Applicants shall have at least three semester hours in each of the four areas.

(D) For the Grades prekindergarten-12 ESL certificate, applicants must have 18 semester hours in English, six of which must be upper division.

(E) For the Grades prekindergarten-12 generic special education certificate, applicants must have 24 semester hours in a combination of subjects taught in the elementary school that must include English, mathematics, a natural science, and a subject in the social studies. Applicants shall have at least three semester hours in each of the four areas.

(F) Courses that focus on topics closely related to the semester hour requirements listed in subparagraphs (A)-(E) of this paragraph may be accepted for admission to the alternative certification program; however, such substitutions shall not exceed six hours for the Grades 6-12 certificate or three semester hours for all other certificates.

(6) The program shall identify specific performance indicators consistent with state-adopted proficiencies and competencies to determine an individual's preparedness for classroom assignment, a curriculum for continued development during ongoing training, and an individual's readiness for licensure at the completion of internship. The program shall include:

(A) use of current research and best practice that focus on teaching, learning, and student achievement through a planned sequence of field-based experiences that integrate knowledge with application;

(B) a variety of student centered activities or services that are field-based, support the proficiencies, and that also provide experiences in public schools that reflect diverse cultural, socioeconomic, and grade level environments;

(C) curriculum and instructional knowledge and applications that include strategies to work with culturally diverse populations;

(D) preassignment training incorporating:

(i) a minimum of 20 clock hours of student contact experiences. The student contact experiences may entail a variety of classroom-based experiences that are locally designed and approved by the committee of stakeholders under subsection (b)(3) of this section; and

(ii) a minimum of six semester hours of course work or a combination of semester hours and equivalent contact hours; and

(E) six semester hours of course work or a combination of semester hours and equivalent contact hours to be completed before certification.

(7) An intern must have acceptable scores on appropriate state-adopted examinations of professional education and content knowledge in the teaching fields or delivery systems related to the certificate sought and the level of assignment.

(8) An intern must meet full appraisal requirements of the state and the local district under the Texas Education Code (TEC) §§21.351-352, and §§150.1001-1004 of this title (relating to Educator Appraisal).

(9) An intern must meet the performance levels as determined by the collaborative.

(d) Procedures for approval, review, and reapproval.

(1) An entity that chooses to prepare teachers using the alternative certification process must direct the program administrator to submit to the SBEC, before implementing a program, a collaboratively developed plan that specifies the means by which the entity shall fulfill the requirements for an approved plan under subsections (b) and (c) of this section.

(2) The SBEC may approve plans for alternative teacher certification. Initial approval of alternative teacher certification plans shall not extend more than one year. Subsequent approval shall be contingent on satisfactory performance under the state-approved accountability system. The SBEC shall consider such performance when granting reapproval requests.

(3) The administrator of an approved alternative teacher certification program must submit to the executive director of the SBEC an annual report that includes the names of candidates in the program and other information that may be required, including results of internal monitoring, review, and assessment of the program.

(4) Alternative teacher certification programs are subject to review by the SBEC.

(e) Alternative certification program options.

(1) During the internship, the intern may pursue an additional certificate or additional subject areas at the same level of assignment by taking the appropriate state-mandated test for certification, provided that screening and all other requirements for the additional certificate or subject areas under this section are met.

(2) If an intern fails to complete all training and certification requirements within the internship year, the program administrator may apply to the executive director of the SBEC to retain the intern in the alternative certification program only until the deficiencies are met, but not to exceed one additional year. The program administrator shall provide rationale for extension and the conditions under which requirements must be met.

(3) If the sponsor of an alternative certification program does not seek reapproval of the program or the SBEC does not grant a reapproval request, interns currently enrolled in the program are provided an opportunity to complete requirements within a reasonable time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter I. Standards for Approval of Institutions Offering Graduate Education Programs for Professional Certification

### 19 TAC §§230.261-230.271

These sections are proposed under Texas Education Code (TEC), §21.045, which requires the State Board for Educator Certification to propose rules establishing standards to govern the approval of all educator preparation programs.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.261. Standard I. Graduate Degree Granting Authority and Accreditation.*

(a) Standard. The institution shall be authorized by the State of Texas to grant advanced degrees at the level required for approved certificate programs, accredited by the Southern Association of Colleges and Schools, and approved by the State Board for Educator Certification (SBEC).

(b) Quality indicators.

(1) The institution shall provide documentation of current and continuing authority to grant advanced degrees in the State of Texas.

(2) The institution shall provide documentation of current and continuing accreditation by the Southern Association of Colleges and Schools.

(3) Institutions shall provide documentation of current and continuing approval of programs by the SBEC.

*§230.262. Standard II. Policy Commitment to Graduate Teacher Education.*

(a) Standard. The institution shall demonstrate a commitment to graduate teacher education as an institutional objective through policy enactment.

(b) Quality indicators.

(1) Short and long-range planning documents of the institution shall confirm a commitment to graduate teacher education as an institutional objective.

(2) The professional education unit shall be established at an organizational level within the institution that allows it to assume its responsibilities and fulfill its objectives.

(3) The administrative head of the professional education unit shall have authority and responsibility comparable to heads of other similar organizational units.

(4) The graduate faculty workload policies shall be applied uniformly throughout the institution and shall be consistent with generally accepted practice and with consideration for student teaching supervision loads, practice, and internships in field-based laboratory settings.

(5) Each semester the faculty workload for supervisors of student teachers shall facilitate effective and regular supervision and shall not exceed an average of two student teachers per semester hour of workload credit for all supervisors.

(6) The class size and structure of professional education courses shall allow for implementation of approved course and program objectives.

(7) The faculty evaluation and merit award system, including policies related to tenure, promotion, and salary increments, shall provide for recognition of performance in the full range of professional endeavors, from scholarly activities on campus to innovative and creative field-related activities.

(8) The institution shall provide for continuing professional development opportunities for faculty in professional education.

*§230.263. Standard III. Organizational Structure for Graduate Teacher Education.*

(a) Standard. The institution shall provide, through its organizational structure, a professional education unit with responsibility for the development and leadership of the graduate teacher education programs.

(b) Quality indicators.

(1) The responsibility for leadership and coordination of graduate teacher education shall be vested in qualified individuals with leadership ability.

(A) The head of the professional education unit shall hold an earned doctorate from an accredited institution.

(B) The head of the professional education unit shall have at least three years of relevant elementary or secondary school experience. Relevant experience must include a minimum of one year of full-time, full-day classroom teaching and may include other instructionally related roles.

(C) The head of the professional education unit shall coordinate the graduate teacher education programs of the institution.

(2) Individuals assigned to areas of specialization, teaching fields, certification, and endorsement components of graduate teacher education programs shall have commensurate graduate preparation in the area of assignment.

(3) The institution shall provide for cooperative advisement of graduate students between the professional education unit and the academic departments providing instruction in approved areas of specialization, teaching fields, certification, and endorsements.

(4) The institution shall provide a procedure for interaction and consultation among faculty in those areas involved with graduate professional preparation.

(5) The professional education unit shall provide documentation, including employment opportunities, as evidence of educational need for all proposed graduate level certificate programs at the time the proposal is submitted for approval to the State Board for Educator Certification (SBEC).

(6) The professional education unit, following the formal review process of the institution, shall be responsible for approving and submitting graduate program proposals to the SBEC for approval.

(7) The institution shall place the responsibility for recommendations for certification with the head of the professional education unit.

(8) When appropriate, and with the approval of the SBEC an institution may deviate from the standards concerning teaching experience by justifying a faculty member's assignment in terms of experience, preparation, and eminence.

*§230.264. Standard IV. Professional Education Unit.*

(a) Standard. The institution shall provide a professional education unit with responsibility for the institution's graduate teacher education program.

(b) Quality indicators.

(1) The professional education unit (school, college, division, or department) shall be responsible for initiating, implementing, and evaluating the graduate teacher education program based upon advice from the academic discipline faculty, the professional education faculty, public school personnel, and learned societies.

(2) The administrative head (dean of education, chairman of education, or director of teacher education) shall direct and coordinate the graduate teacher education program of the institution.

(3) The professional education unit shall be responsible for the coordination of advisement activities for graduate students preparing for certification as educators.

(4) The professional education unit shall be identifiable in the institutional budget, which shall provide for an administrative head, faculty and staff salaries, faculty development, maintenance and operating costs, travel, instructional services, and other support functions for teacher education.

(5) The professional education unit shall be responsible for the organization of the local cooperative teacher education center in accordance with Subchapter D of this chapter (relating to Local Cooperative Teacher Education Centers).

*§230.265. Standard V. Graduate Program and Curriculum Characteristics.*

(a) Standard. The institution shall provide graduate programs and curricula that include at least the following dimensions:

(1) content for teaching specialty or professional assignment;

(2) relevant theory from supporting disciplines;

(3) practical experience appropriate to the certificate; and

(4) development of applicable research skills.

(b) Quality indicators.

(1) The graduate level professional preparation programs in education shall include work that is characteristic of and comparable to graduate study in other professional programs of the institution.

(A) The curriculum shall integrate studies in theory from disciplines relevant to the professional role for which students are being prepared.

(B) The curriculum shall include research methodology applicable to the field of professional preparation.

(2) Each graduate level preparation program shall include advanced study in the content of certification areas or teaching specialty fields for which students are being prepared or in which they are renewing certificates.

(A) The institution shall require for each major at least 18 semester hours of courses that are open only to graduate students.

(B) All courses in an approved graduate level certificate program shall be offered at least once every three years.

(3) Each graduate level professional preparation program shall include appropriate practical experience in the certification area.

(A) The curriculum shall include appropriate laboratory, clinical, and field experiences through which students conceptualize principles and interpret their application to practical problems.

(B) Practice, internships, and similar field experiences shall be provided in graduate professional preparation programs.

(4) Each graduate professional preparation program shall include studies of the multicultural character of American society with emphasis on working with the various types of students in the Texas school population.

(5) The institution shall offer graduate majors in at least two disciplines other than professional education.

(6) All programs in the graduate teacher education curricula shall be developed from stated goals and objectives that reflect an awareness of the recommendations of practicing professionals and learned societies.

(7) All proposed programs submitted to the State Board for Educator Certification (SBEC) shall be accompanied by documentation of review by the local cooperative teacher education center established under Subchapter D of this chapter (relating to Local Cooperative Teacher Education Center).

(8) The institution shall have a policy statement that places a time limitation on the counting of courses for graduate degree credit.

(9) Candidates for graduate degrees shall be required to demonstrate proficiency through a comprehensive examination or equivalent culminating experience.

(10) Candidates recommended for certification shall be required to show satisfactory performance on a comprehensive examination in each certificate area as required by the SBEC.

*§230.266. Standard VI. Characteristics of Graduate Teacher Education Faculty.*

(a) Standard. The institution shall provide a sufficient number of faculty members who have appropriate preparation and experience to support the graduate professional preparation programs for which the institution is approved.

(b) Quality indicators.

(1) Faculty members shall possess documented subject matter expertise in one or more academic fields of specialization or areas of assignment.

(2) Documentation of demonstrated ability to teach effectively shall be accessible to accreditation teams for each member of the teaching faculty participating in teacher education programs.

(3) Each area of graduate professional preparation shall have sufficient full-time faculty members to ensure student contact with a variety of viewpoints in a field of study.

(4) Each faculty member teaching graduate courses contributing to an area of professional preparation shall hold an earned doctorate or equivalent in that area from an accredited institution.

(5) The majority of the full-time graduate education faculty and all teachers of education methods courses in the professional education unit shall have certification or the equivalent and at least three years of elementary or secondary experience in the teaching field for which graduates are being prepared.

(6) Each graduate faculty member who teaches a professional education course shall maintain a minimum of 90 clock hours of involvement in field situations with accredited schools every seven years.

(7) The institution shall provide appropriate and continuing professional development activities for graduate faculty in the professional education unit.

(8) When appropriate, and with the approval of the State Board for Educator Certification, an institution may deviate from the standards concerning teaching experience by justifying a faculty member's assignment in terms of experience, preparation, and eminence.

*§230.267. Standard VII. Graduate Student Development Services.*

(a) Standard. The institution shall provide student services that are responsive to the unique needs of graduate student populations who will be recommended for admission, retention, certification, or endorsement.

(b) Quality indicators.

(1) The institution shall publish and disseminate the minimum acceptable scores as established by the State Board for Educator Certification (SBEC) on the state-adopted competency examinations required for certification in the areas of graduate teacher preparation for which the institution is approved. An institution that requires a score exceeding the minimum score established by the SBEC shall publish and disseminate the fact that the score required by the institution exceeds the state minimum requirements.

(2) The institution shall publish and disseminate specific policies to govern admission to and retention of students in graduate education programs.

(3) The graduate admission policies shall include the following.

(A) Each student shall hold a baccalaureate or graduate degree from an accredited institution.

(B) Each student shall have a minimum overall grade point average of 2.5 on a four-point scale or the equivalent.

(C) Each student shall submit a transcript with evidence of sufficient prerequisites for the program or shall have an approved plan for removing deficiencies.

(4) Graduate admission policies for professional education shall be comparable to those of other graduate programs in the institution.

(5) Graduate degree programs leading to certification shall:

(A) require students to complete a residence requirement; and

(B) require students to have at least a 3.0 average on a four-point scale or the equivalent on all graduate work attempted.

(6) Candidates recommended for graduate level certification shall be required to show satisfactory performance on a comprehensive examination in each certificate area as required by the SBEC.

(7) The institution shall evaluate and accept transferred graduate credits in accordance with published institutional policies. The only credits and degrees acceptable for certification of all educators are those earned and conferred by institutions of higher education that at such time were accredited or otherwise approved by a state department of education, a recognized governmental organization, or a recognized regional accrediting organization.

(8) The institution shall grant graduate credit for independent studies in accordance with published institutional policies.

(9) The institution shall provide counseling and advisement to assist graduate students in the professional preparation program.

(A) Counseling and advisement shall be administered and coordinated by the professional education faculty.

(B) Counseling and advisement shall include procedures for appraisal of personal potential, diagnosis of needs, and direction of students into other fields of study when advisable.

(C) The institution shall have an information system that provides current data on student performance and progress for counseling and advising.

(10) The institution shall provide placement services to assist graduate students seeking professional placement.

(A) The institution shall list professional positions known to be currently available.

(B) The institution shall make available to school districts on request information about the qualifications and potential of teacher education graduates.

(C) The institution shall provide opportunities for employers to interview students on campus.

*§230.268. Standard VIII. Facilities and Resources for Graduate Teacher Education.*

(a) Standard. The institution shall provide and maintain accessibility to physical facilities and learning resources necessary to achieve the objectives of its graduate teacher education programs.

(b) Quality indicators.

(1) The physical facilities shall meet the operational requirements of the objectives of the graduate professional preparation programs.

(2) The physical facilities provided for the professional education unit shall be comparable in quality and appropriateness to those provided by the institution for other areas of professional study.

(3) The physical facilities for programs and faculty shall facilitate professional communication.

(4) Specialized facilities, such as clinics and laboratories, shall be provided and equipped as required for each program area for which the institution is approved.

(5) Instructional media in multiple formats shall be provided for faculty and students.

(6) Facilities, equipment, and materials for the preparation of instructional media shall be provided as required for instruction and research for each program area for which the institution is approved.

(7) The graduate library shall provide current, quality resources and materials substantially in excess of those required for initial certification program standards.

(8) The library shall be accessible to faculty and students on a regular, scheduled basis.

*§230.269. Standard IX. Financial Support for Graduate Teacher Education.*

(a) Standard. The institution shall provide financial support for sustaining approved graduate programs for professional education at an effective level.

(b) Quality indicators.

(1) The allocation of financial resources to graduate teacher education programs and support operations shall be a clearly defined written process and shall include budgetary components for administration, faculty and staff salaries, maintenance and operating costs, travel, instructional services, and other support functions.

(2) Professional education representatives shall participate in the institution's allocation process, its review, and continuing development.

(3) Requests for allocations of financial resources for graduate teacher education programs and authority for expenditure of the resources allocated to the professional education unit shall be the responsibility of the administrative head of that unit.

(4) Funds allocated and expended for graduate teacher education programs shall be adequate and be based on factors that must include, but need not be limited to, the following:

(A) college or university and program enrollments;

(B) program productivity and school needs served;

(C) special operation and support needs of graduate teacher education programs, including supervisory travel, participation in professional meetings, clerical assistance, and professional service activities;

(D) laboratory and field settings required by the type, size, and unique needs of approved graduate programs; and

(E) level of developmental support provided for program innovation, assessment of program relevance to school needs, and program quality improvement.

(5) The institution shall have a systematic process that requires internal budgetary and fiscal responsibility.

*§230.270. Standard X. Collaborative Planning and Review Processes.*

(a) Standard. The institution shall provide a process for collaborative planning and review of teacher education programs.

(b) Quality indicators.

(1) The planning and review process for teacher education programs shall involve representatives of the practicing profession, including public school teachers and administrators, faculties in

professional education and academic discipline areas for which the institution is approved, and students and graduates of the program.

(2) The institution shall maintain active membership in a local cooperative teacher education center in accordance with Subchapter D of this chapter (relating to Local Cooperative Teacher Education Centers).

(3) The institution shall provide for internal collaborative review and advisement regarding teacher education programs, that involves faculty representation from approved programs and students enrolled in the graduate professional preparation programs.

*§230.271. Standard XI. Evaluation for Quality Control of Graduate Programs.*

(a) Standard. The institution shall have a process for evaluating its teacher education organizational and policy structure, administrative processes, financial support, faculty performance, student services, programs and curriculum, facilities and resources, collaborative activities, and evaluative systems.

(b) Quality indicators.

(1) The evaluation process shall include a procedure for collecting information from faculty, students, public school educators, graduates, and others concerning the graduate preparation program.

(2) The institution shall provide for a continuous and systematic process of follow-up and evaluation of its teacher education graduates.

(3) The continuous planning, review, and development of the graduate preparation programs shall respond to needs identified through the evaluation process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter J. Graduate Education Programs for Professional Certification

### **19 TAC §§230.301-230.308, 230.310, 230.311, 230.313-230.316, 230.319**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, and 21.050 which require the State Board for Educator Certification to establish the academic, internship, and examination requirements for all candidates for certification as well as the classes of certificates offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.301. Program Requirements for Master's Degree.*

(a) The candidate must complete from 24 to 36 semester hours of graduate courses with an average grade of B or better. In a program in which a thesis is required, the candidate shall complete at least 24 semester hours of courses exclusive of the thesis. In a program in which no thesis is required, the candidate shall complete a minimum of 36 semester hours of courses. At least half the courses in the student's program shall be graduate level. Institutions that have established policies and procedures for carefully selecting advanced undergraduate courses appropriate for graduate instruction may use such courses for the program.

(b) An institution shall not offer a master's degree unless it can establish authentic graduate majors in at least three departments. An institution must offer at least 18 semester hours of graduate courses in each major. All such courses shall be offered within a three-year period.

(c) Each approved institution shall have a policy statement and procedures restricting the length of time after a course is completed during which the course may be counted toward graduate degree credit.

(d) A residence of one academic year or the equivalent in summer sessions is required.

(e) The institution shall establish a systematic plan to assure that each candidate for the master's degree has successfully proved his or her ability to accomplish graduate level study.

(f) A comprehensive written or oral examination or both shall be passed by the candidate covering at least the major field and the thesis if one is required.

(g) To encourage extensive reading, independent thinking, and appropriate individual research, the graduate student load shall be lower than the normal undergraduate load.

(h) All policies affecting graduate curricula and work leading to graduate degrees shall be formulated by a single responsible agency of the institution.

(i) Cooperative programs among colleges shall be encouraged and shall be approved on the same basis as programs in individual institutions.

*§230.302. Credits by Transfer, Extension Study, or Correspondence.*

Credit not exceeding six semester hours obtained in a recognized institution other than the one offering the graduate program may be transferred and applied toward the master's degree, provided the work offered for transfer was graduate level and the transferred credit does not reduce the minimum residence requirement of one academic year. Credit not exceeding six semester hours may be accepted for extension study, but the credit may not be applied to reduce the on-campus residence requirement. Credit toward a master's degree may not be earned for extension study if the master's program requires only the minimum of 24 semester hours of courses. No more than nine semester hours may be accepted from extension and transferred credits combined. No credits toward a graduate degree may be earned by correspondence study.

*§230.303. Planned Program of Preparation.*

(a) The planned program of preparation shall provide for the following:

(1) responsible direction and coordination of efforts in all professional programs by the head of the college, school, division, or department of education;

(2) representation in program planning by faculty groups that participate in the professional program;

(3) faculty understanding of the curriculum organization and current problems of the public schools through faculty selection and by providing means for frequent contacts with public school programs;

(4) advisory participation in program planning of experienced teachers, administrators, and special service personnel in the public schools;

(5) adequate procedures for selecting, admitting, retaining, and guiding applicants who have the aptitudes considered necessary and desirable for a professional certificate;

(6) flexibility in adapting the planned program to the individual student based on the student's characteristics and background experience;

(7) procedures for recommending certification that involve action by the professional education faculty and the departments responsible for subject preparation; and

(8) continuous evaluation and revision of the professional programs.

(b) The program is designed to increase the applicant's professional competence and knowledge of the subject matter above the levels required for the provisional certificate. The applicant shall hold or be eligible for a provisional certificate before being considered for admission into a professional program. The applicant shall have three years of teaching experience before being considered for recommendation for the professional certificate.

(1) The instruction shall be geared to the maturity and experience of the postgraduate student.

(2) The professional program shall require the completion of 30 semester hours of work creditable toward a graduate degree. At least 18 semester hours of the program must be graduate level courses.

(3) In planning programs for elementary and secondary teachers, the college shall ensure that students receive a broad foundation of knowledge and that one or more areas of learning are developed in depth.

(4) Courses outside the major field shall count toward certification, provided they assist in the development of a closely related area.

(5) Although courses completed in undergraduate study are not normally creditable toward a professional certificate, such work may be taken as a part of the resource area requirement used to qualify a person for an area of specialization or an additional teaching field applicable on the provisional certificate.

(6) The applicant's understanding of and ability to do research shall be a requirement for graduation from a professional program.

(c) The program shall be adequately staffed to assure individual attention and an advanced level of specialized study.

(1) Faculty selected for graduate instruction shall have demonstrable interest in research, a record of achievement in and mastery of a particular area of knowledge, and an intense interest in and competence for graduate level instruction.

(2) The faculty members offering work in each specialization area (e.g. secondary, superintendent, counselor, etc.) shall be especially well-qualified by preparation and experience in the specialization area.

(3) In each specialization area offered in the professional program, at least one faculty member shall hold a doctor's degree in the appropriate area of preparation.

(4) The total teaching load of graduate faculty members shall accommodate the demands of graduate level work, including individual guidance of and conferences with students, instruction of small groups, and direction of projects and research.

(d) The approved professional program shall be supported by related graduate programs in areas outside the educational field. These related graduate programs shall offer an adequate number of courses restricted to graduate students to provide the necessary breadth and depth of knowledge in the subject matter.

(e) The institution shall be prepared to demonstrate the integrity of its professional program.

(1) Evening or afternoon classes shall be equivalent to courses offered at other times during regular sessions of the school year and require library and laboratory assignments to maintain high standards.

(2) Extension courses shall be offered only at sites that offer resources equivalent to those on the institution's campus.

(3) Programs conducted in part during summer sessions shall be of the same quality in instructional staff, level of teaching, and content as courses of study conducted during the regular academic year. A substantial portion of faculty members used during summer sessions shall be faculty members regularly employed by the institution.

(4) Minimum residence: a residence of one academic year or the equivalent in summer sessions is required. In graduate programs that require a thesis, at least 24 semester hours of credit required for the master's degree shall be earned in residence at the institution conferring the degree. For programs that require 36 semester hours of credit but do not require a thesis, at least 27 semester hours must be earned in residence.

(5) Each student admitted to a professional certificate program must hold a provisional certificate and a bachelor's degree from a college recognized by a state or regional accrediting agency. For full admission, the applicant shall present his or her transcript showing satisfactory undergraduate preparation for the field(s) in which he or she plans to specialize. Applicants for admission to the professional certificate program shall have attained at least a C+ grade point average (2.5 on a scale with A equal to 4.0) over the entire undergraduate program. Scores on a standardized test determined to be appropriate by the institution may be used to supplement the academic record. The applicant shall file an official application approved by the department of education for admission to the professional certificate program.



(6) The candidate must complete 30 semester hours of the approved program for the professional certificate with an average grade of B or better.

(f) To encourage extensive reading, independent thinking, and appropriate individual research, the graduate student load shall be lower than the normal undergraduate load.

(g) Fields for professional certificate programs include:

- (1) all-level;
- (2) elementary; and
- (3) secondary.

(h) Professional certificate programs shall consider the undergraduate provisional program(s) completed by the applicant. The following requirements are applicable in addition to the undergraduate criteria and the general requirements for the professional programs. The professional teacher's certificate shall require three years of classroom teaching experience and shall consist of 30 semester hours and include the following.

(1) The specialization area shall consist of 12 semester hours of graduate courses in a subject included in the public school curriculum in which the student has at least 24 semester hours of undergraduate credit in a program for secondary teachers, or 18 semester hours in a program for elementary teachers. Elementary teachers may choose 12 semester hours in a combination of subjects.

(2) The professional development area shall consist of six semester hours of graduate courses in professional development that are designed to increase the efficiency of the public school teacher.

(3) The resource area shall consist of six semester hours of courses that provide background for the specialization area, or courses chosen to extend the applicant's preparation in a subject matter field other than his or her specialization. For elementary teachers, this may include courses in elementary content.

*§230.304. Professional Administrator's Certificates.*

(a) Certificate requirements. The professional certificate for a school administrator or the professional certificate for a school superintendent shall be a document issued to a person who:

- (1) holds the provisional teacher certificate;
- (2) holds a master's degree;
- (3) has had a minimum of two years classroom teaching experience;
- (4) has completed an approved administrative internship; and
- (5) has completed an approved program design for meeting the requirements of the certification desired.

(b) Certificate programs. The program for the professional certificate for school administrators (all positions other than the superintendency) shall total 45 semester hours of graduate credit. The program for the professional certificate for school superintendents shall total 60 semester hours of graduate credit.

(1) Common core for administrator and superintendent.

(A) The program shall include 15-18 semester hours of graduate credit in courses open only to graduate students that are designed to develop general administrative competence in and under-

standing of administrative theory and practice, curriculum theory and instructional supervision, school law and business management, and the administration of special and compensatory education.

(B) The program shall also include 9-12 semester hours of advanced credit earned after the baccalaureate degree in academic areas of study such as sociology, anthropology, psychology, business administration, economics, or computer science to provide breadth and understanding of the role of the professional administrator.

(2) Specialized preparation for school administrators. The program shall include 15-18 semester hours of graduate credit in courses open only to graduate students in areas of competence that are designed either for the position of principal or central administrator. Each program for the preparation of the school principal shall include elements designed to provide competence in administering special education, reading, and vocational-technical education.

(3) Specialized preparation for school superintendent. The program shall consist of 15 additional hours of graduate credit in courses open only to graduate students in areas of competence that are designed for the position of superintendent. Each program for the preparation of the school superintendent shall include elements designed to provide competence in administering special education, and vocational-technical education.

(4) Internship. The program shall include three to six semester hours of graduate credit in courses open only to graduate students in an approved internship.

(5) An individual may receive up to six semester hours (90 equivalent clock hours) of credit when he or she substitutes instructional leadership training and training received under the Texas Education Code (TEC), §§21.351-352, for part of the instructional supervision and personnel evaluation requirements for the mid-management administrator certificate identified in this section. An institution of higher education with an approved program for the preparation of mid-management administrators shall lower appropriately and equivalently the number of semester hours required in the individual's certification plan based on verification of the substitution credit by a school district or training sponsor.

(c) Design of certificate programs. Within the program, an institution may provide courses, experiences, equivalencies, competence identification, and performance assessment to ascertain the completion of the approved program. The design of the program would emphasize the following:

- (1) administrative core;
- (2) specialized preparation for principal or central administrator, including:
  - (A) specialized superintendent;
  - (B) specialized principal or central administrator; and
  - (C) core; and
- (3) specialized preparation for superintendent.

*§230.305. Temporary Certificate.*

(a) Available temporary certificates. Temporary certificates for school administrators are available for the following positions:

- (1) assistant principal;

- (2) principal; and
- (3) superintendent.

(b) Certificate requirements. The appropriate temporary certificate shall be issued upon the recommendation of a college or university to a person meeting the following requirements.

(1) Assistant principal. The individual must:

- (A) hold a bachelor's degree;
- (B) hold a provisional teacher certificate;
- (C) have completed two years of classroom teaching experience

(D) have completed a minimum of 12 graduate hours of the common administrative core required for the professional administrator's certificate;

(E) be admitted to the professional administrator's program of the institution recommending him or her.

(2) Principal. The individual must:

- (A) hold a master's degree;
- (B) hold a provisional teacher certificate;
- (C) have completed two years of classroom teaching experience;

(D) have completed a minimum of 12 graduate hours of the required common core for administrators in the courses designed to develop general administrative competence and understanding;

(E) be admitted to the professional administrator's program of the institution recommending him or her.

(3) Superintendent. The individual must:

- (A) hold a professional administrator's certificate;
- (B) be admitted to the professional superintendent's program of the institution recommending him.

(c) Certificate validity.

(1) Each temporary certificate is valid for a period of five years.

(2) The temporary certificate is nonrenewable.

*§230.306. Supervisor.*

These specific requirements are applicable in addition to the undergraduate criteria outlined in Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements).

(1) Leadership for instructional improvement (at least nine semester hours). This area provides the knowledge, skills, and techniques necessary for effective leadership in instructional improvement. An understanding of the supervisory role as an aid to instruction shall be developed.

(2) Resource areas (at least 21 semester hours).

(A) The college or university shall help the prospective supervisor achieve a balanced program of teacher education by giving attention to related resource areas. The amount of emphasis

given to an area shall depend on the student's undergraduate preparation and experience.

(B) These advanced level studies are not necessarily represented by a sequence of semester hour courses. They are planned programs to meet the needs of the individual student.

(C) Upon completion of the professional program, the prospective supervisor shall have developed an understanding of learning processes. He or she shall be able to apply this knowledge to help each school child realize his or her potential.

(D) Also, the prospective supervisor shall have developed a deeper understanding of the instructional program through intensive study of the content, methods, and techniques of instruction; organization of the instructional program; the selection, development, and use of materials for instruction; and the demands of various teaching situations.

(3) The certificate. The professional supervisor certificate shall require:

- (A) a valid provisional teaching certificate; and
- (B) three years of classroom teaching experience.

*§230.307. Counselor.*

These specific requirements are applicable in addition to the undergraduate criteria outlined in Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements).

(1) The guidance program (at least three semester hours). This area provides an understanding of the principles, philosophy, organization, and services of the guidance program.

(2) The pupil served (at least six semester hours). This area is devoted to intensive study that develops an understanding of the physical, intellectual, social, and emotional development of children and youth, and the influences of the school program on development.

(3) Resource areas (at least 21 semester hours).

(A) The college or university shall help the prospective counselor achieve a balanced program of teacher education by giving attention to related resource areas. The amount of emphasis given to an area shall depend on the student's undergraduate preparation and experience.

(B) These advanced level studies are not necessarily represented by a sequence of semester hour courses. They are planned programs to meet the needs of the individual student. They are intended to ensure professional competence.

(C) Upon completion of the professional program, the prospective counselor shall have developed skills in guidance techniques that assure an ability to use the instruments of measurement and evaluation necessary for understanding, appraising, and counseling individuals and groups. The student shall be skilled in the use of occupational and educational information and materials appropriate for the guidance of youths. Also, the student shall have developed, through study and supervised practice, an ability to work with groups of youths and adults and to counsel with individuals.

(4) The certificate. The counselor certificate shall require:

- (A) a valid provisional teaching certificate; and

- (B) three years of classroom teaching experience.

*§230.308. Visiting Teacher.*

These specific requirements are applicable in addition to the undergraduate criteria outlined in Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements).

(1) The certificate. The visiting teacher certificate shall be a document other than the teacher's certificate and require at least 36 semester hours beyond the bachelor's degree. The program shall include a provisional teacher's certificate and a minimum of three years of successful teaching experience or three years of successful experience in an approved social welfare agency. The certificate for visiting teachers shall cover the assignment of personnel to both the elementary and the secondary schools.

(2) Emergency permit. The emergency permit may be issued and renewed annually for three scholastic years subject to the completion each year of at least six semester hours of courses leading to the visiting teacher certificate. An emergency permit for a visiting teacher is available only upon the request of an employing superintendent for a person who:

(A) has a bachelor's degree from an accredited college or university;

(B) has a provisional teaching certificate;

(C) has a minimum of three years of successful teaching experience or three years of successful experience in an approved social welfare agency;

(D) has completed a minimum of 15 semester hours of courses in the social or behavioral sciences, six of which must be in the work required of visiting teachers in the specialization area.

(3) The program.

(A) The certificate for a program for the preparation of visiting teachers shall include:

(i) a provisional teacher's certificate;

(ii) three years of successful teaching experience in an approved school or three years in an approved social welfare agency;

(iii) the completion of the 36 semester hour program for the visiting teacher certificate.

(B) The program for the visiting teacher certificate shall include at least 36 semester hours of courses beyond the bachelor's degree, 18 of which must be exclusively graduate level.

(C) The institution shall be responsible for establishing the sequence of coursework, that shall include the following areas.

(i) Professional education area (at least three semester hours). A course or courses dealing with principles, issues, social forces, and trends affecting the organization and administration of public schools shall include the fundamental principles of educational administration and the delineation of issues. Analysis shall be made of social forces and trends affecting the organization and administration of public schools.

(ii) Specialization area (at least 21 semester hours). Specialization shall be in courses dealing with the following:

(I) normal growth of the individual from prenatal period to old age, and the somatic, emotional, and cultural factors influencing behavior at different age levels and abnormal developments;

(II) study of the theories and techniques of casework or guidance in assisting individuals with their problems;

(III) a review of social psychological theory and analysis of human behavior in social settings;

(IV) techniques and principles of working with groups for educational, therapeutic, or self-help purposes;

(V) the nature of health and welfare resources, both public and private, that exist on the community level (including an analysis of strengths and weaknesses of existing resources);

(VI) analysis of community organization process and methods of determining and meeting needs; skills and techniques needed in order to manage problems of change as they affect public schools. Practical experiences will be developed for courses dealing with the dynamics of the individual, group, and community; and

(VII) presentation of knowledge about tests and measurement, and research techniques, practices, and terminology, to help the student understand test results and use research reports.

(iii) Resource area (at least 12 semester hours).

This area shall be used to strengthen the specialization or professional education components of the student's learning experience.

*§230.310. Reading Specialist.*

A professional reading specialist certificate is issued upon completion of the following requirements.

(1) The certificate shall be based on a provisional elementary, junior high, or high school certificate that was issued on the basis of a baccalaureate degree program.

(2) The individual to whom the certificate is issued shall have completed three years of classroom teaching.

(3) The program for the certificate includes the following:

(A) a minimum of 12 semester hours of graduate work in reading, including the following suggested areas: foundations of reading; diagnosis and correction of reading disabilities, including dyslexia; and clinical or laboratory practicum in reading;

(B) a resource area of at least six semester hours, including multicultural concepts and linguistics;

(C) a professional education area of at least six semester hours. (Individuals holding provisional certification at the elementary level are required to have completed at least six semester hours in the study of the junior high and/or high school age pupil and in the study of working with pupils at the secondary level. Individuals holding provisional certification at the junior high and/or high school level are required to have completed at least six semester hours in the study of the elementary school pupil and in the study of working with pupils at this level.); and

(D) electives as needed to complete the master's degree.

*§230.311. Learning Resources Specialist.*

(a) All-level professional certificate for the learning resources specialist. Qualifications for the all-level learning resources specialist certificate include the following:

- (1) a bachelor's degree from an accredited institution;
- (2) a valid Texas teacher's certificate;
- (3) a basic understanding of multicultural and multiethnic elements in society; and
- (4) the recommendation by an accredited institution of a person who has completed the following:

(A) an approved program of not less than 36 semester hours, of which 27 semester hours shall be graduate level; and

(B) a minimum of three years of teaching experience.

(b) All-level learning resources endorsement. Qualifications for the all-level learning resources endorsement include the following:

- (1) a bachelor's degree from an accredited institution;
- (2) a valid Texas teacher's certificate;
- (3) a basic understanding of multicultural and multiethnic elements in society; and
- (4) the recommendation of an accredited institution to a person who has completed the 21 semester hours in the specialization area, including the practicum, in an approved program.

(c) Equivalency provision for assignment.

(1) Anyone who currently holds the provisional or the professional librarian certificate or who had completed such certificate programs by August 31, 1979, in fulfillment of the requirements for assignment as a librarian under the Texas Public School Finance Plan (House Bill 1126, 64th Legislature) shall be deemed automatically to have, for assignment purposes, the equivalent of:

(A) the learning resources endorsement based upon the provisional librarian certificate; or

(B) the learning resources specialist certificate based upon the professional librarian certificate.

(2) No application or overt action is necessary to obtain the equivalency status.

(d) The program for the learning resources specialist. The program for the all-level learning resources specialist certificate shall include at least 36 semester hours of courses beyond the bachelor's degree, 27 of which shall be graduate level. The program shall also include the following.

(1) Specialization area. This area shall consist of a minimum of 21 semester hours, at least 12 of which shall be graduate level and three of which shall be a practicum; or 21 semester hours and one year of experience as a full-time public school librarian. This 21 semester hour block shall develop competence in:

- (A) selecting, evaluating, and acquiring materials in all formats, including multicultural and multiethnic materials;
- (B) processing and organizing a unified collection of materials;
- (C) instructional design and development;

(D) organizing and administering a learning resources center;

(E) local production of instructional materials;

(F) knowing and using materials for children and young adults; and

(G) reference and bibliography.

(2) Resource area. This area shall consist of a minimum of six semester hours of graduate level courses designed to strengthen the specialization or professional education components of the student's learning experience. These courses shall be selected from such areas as:

(A) instructional design;

(B) communications;

(C) advanced local production of instructional materials;

(D) research (interpretation and application);

(E) statistics;

(F) program planning and development;

(G) management;

(H) information networks;

(I) human relations;

(J) client groups and information needs;

(K) automation; and

(L) cognate courses based on the backgrounds of individual students.

(3) Professional education area. This area shall consist of a minimum of six semester hours of graduate level courses, three of which shall be in the area of curriculum development and design, and three of which may be taken in one of the following areas:

(A) psychology;

(B) learning theory;

(C) educational systems;

(D) organization of education; and

(E) education in society, including multicultural and multiethnic elements.

(e) The program for the learning resources endorsement. The all-level learning resources endorsement program is contained in the specialization area which is a minimum of 21 semester hours, at least 12 of which shall be graduate level and three of which shall be a practicum, or 21 semester hours and one year of experience as a full-time public school librarian. This 21 semester hour block shall develop basic competencies in:

(1) selection, evaluation, and acquisition of materials in all formats, including multicultural and multiethnic materials;

(2) processing and organization of a unified collection of materials;

(3) instructional design and development;

- (4) learning resources center organization and administration;
- (5) local production of instructional materials;
- (6) materials for children and young adults and utilization practices; and
- (7) reference and bibliography.

*§230.313. Special Education Supervisor.*

(a) Certification requirements. To qualify for certification as a special education supervisor a person must:

- (1) hold a master's degree from an accredited institution in the field of education or a related field;
- (2) have completed three years of classroom teaching experience in an approved school;
- (3) hold a valid Texas supervisor's or administrator's certificate; and
- (4) hold a valid Texas special education certificate.

(b) Prior service provision. Anyone who was assigned full-time responsibility for the supervision of a local special education program for three successive years prior to school year 1971-1972 may be issued a special education supervisor's certificate if the individual:

- (1) holds a master's degree;
- (2) holds a valid Texas special education certificate and/or valid administrator's or supervisor's certificate; and
- (3) presents verification from a local superintendent that he or she was assigned full-time special education supervisory responsibilities for a period of three years or more.

*§230.314. Special Education Visiting Teacher.*

(a) Certification requirements. The requirements for certification as a special education visiting teacher shall be the same as those currently required for all visiting teachers. This program shall include at least six semester hours of courses in education for exceptional children.

(b) Prior service provision. Anyone who was assigned full-time responsibility as a special education visiting teacher in a local school program for three successive years prior to school year 1971-1972 may be issued a special education visiting teacher's certificate if the individual:

- (1) holds a bachelor's degree;
- (2) holds a valid Texas teacher's certificate; and
- (3) presents verification from a local superintendent that he or she served full-time as a special education visiting teacher for three successive years prior to school year 1971-1972.

*§230.315. Special Education Counselor.*

The requirements for certification as a special education counselor shall be the same as those currently required for all counselors, except that the special education counselor must have at least six semester hours of courses in education for exceptional children.

*§230.316. Educational Diagnostician (Special Education).*

(a) Requirements for professional certification as an educational diagnostician. The professional educational diagnostician cer-

tificate shall require a valid provisional teaching certificate and three years of classroom teaching experience. The professional program for educational diagnostician shall require an earned master's degree. At least 18 semester hours of the program must be identified as graduate courses in the institution's catalogue.

(b) Program. The program shall include the following major areas of professional competence.

(1) Knowledge of the exceptional child (at least nine semester hours). This area shall provide the prospective educational diagnostician with knowledge of the learning characteristics of children deficient in basic integrities that can be categorized into peripheral nervous system dysfunctions, central nervous system dysfunctions, and behavioral disorders.

(A) Such characteristics may include disorders in sensory functioning, perception, conceptualization, memory, language, attention, neuromuscular coordination, emotional-social behavior, reading, writing, arithmetic, spelling, and any developmental disparity in the physiological and psychological processes related to education.

(B) This area should provide conceptual models that integrate the traditional categories of exceptionality. For example, a model of communication theory, cognitive processes, motivational resources, or information processing may be applied to all areas of exceptionality.

(2) Knowledge of psychoeducational and other diagnostic procedures (at least nine hours). This area should provide the prospective educational diagnostician with the knowledge to specify the behavioral symptoms that are related to failure in school-related tasks and investigate possible causal factors and make recommendations for correcting, ameliorating, or compensating for performance. The educational diagnostician needs to develop functional competence in:

(A) using various formal and informal methods of appraising and communicating pupils' educational status and progress, both in traditional academic areas and in other areas of school responsibility, such as identification of children with special problems or disabilities in cognitive, motor, sensory, language, social, or emotional growth;

(B) using various types of clinical data that are relevant to special education services; and

(C) using a wide array of data for appraisal and educational and vocational planning for the exceptional learner.

(3) Knowledge of human development (at least three semester hours). This area should provide the prospective educational diagnostician a comprehensive and comparative knowledge of:

(A) the principles of child growth and development, including the biological and sociocultural determinants of growth, maturation, and learning; and

(B) the implications of various kinds of exceptional development and behavior for growth, maturation, and learning, and for reciprocal relationships between the exceptional person and other members of society.

(4) Knowledge of learning theory (at least six semester hours). This area should provide the prospective educational diagnostician a comprehensive and comparative knowledge of:

(A) the sets of circumstances that obtain when human learning occurs;

(B) the conditions that govern learning beyond the traditionally studied prototypes of responses, conditioning, and association;

(C) the prerequisites for specific types of learning and the sequence in learning school- related tasks; and

(D) the competence to manipulate events to effect desired learning.

(5) Knowledge of instructional modification, including practical application (remediation techniques and materials) (at least six semester hours). This area should provide the prospective educational diagnostician:

(A) competence in integrating knowledge of the exceptional child, diagnostic procedures, conditions for learning, and the sequence in learning to relate these to educational programs for exceptional learners. This implies competence in developing educational strategies for the remediation, amelioration, or compensation of exceptionality as it interferes with achievement or adjustment in school;

(B) information and skills necessary to develop, organize, teach, and evaluate curriculum modified on an individual basis for the exceptional learner;

(C) information and familiarity with instructional materials necessary to adapt and modify curriculum and instruction to the special needs of exceptional learners at the elementary and secondary level; and

(D) competence in evaluating methods and materials to determine their effectiveness in meeting instructional goals.

*§230.319. Certification Standards for Vocational Education Supportive Professional Personnel.*

(a) Vocational counselor certificate. An applicant for a vocational counselor certificate must:

(1) hold a valid Texas counselor certificate;

(2) have completed 12 semester hours of specified vocational guidance courses; and

(3) have satisfied one of the following requirements:

(A) have three years of experience in occupations for which vocational education is being conducted in Texas public secondary schools (may include up to two years of teaching experience); or

(B) have two years of teaching experience in an approved vocational education program adopted by the State Board of Education (SBOE) under the Texas Education Code (TEC), §28.002(b).

(b) Vocational supervisor (administrator) certificate.

(1) An applicant for a vocational supervisor (administrator) certificate must:

(A) hold a bachelor's degree;

(B) hold a valid Texas teacher certificate appropriate for the grade level of the teachers or programs in the supervisory assignment;

(C) have satisfied one or a combination of the following requirements:

(i) have three years of teaching experience in an approved vocational education program adopted by the SBOE; or

(ii) have three years of public school experience as a certified vocational counselor; and

(D) have completed 30 semester hours in an approved program that includes 18 semester hours in approved vocational supervision courses and 12 semester hours in general supervision or courses designed to support the supervisory role.

(2) An individual who holds a master's degree and was approved on an emergency basis before September 1, 1974, must complete only that part of the program specified in paragraph (1)(D) of this subsection requiring 18 semester hours of approved vocational supervision courses.

(3) An individual approved on an emergency basis after September 1, 1974, must complete the full 30 semester hours in an approved program specified in paragraph (1)(D) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

TRD-9613892

Mark Littleton

Executive Director

State Board for Educator Certification

Proposed date of adoption: November 1, 1996

For further information, please call: (512) 469-3004

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Subchapter K. Alternative Certification of Administrators

**19 TAC §230.361**

This section is proposed under Texas Education Code (TEC), §21.049, which requires the State Board for Educator Certification to propose rules providing for alternative certification programs.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.361. Requirements for the Alternative Certification of Administrators.*

(a) General provisions. Approval of alternative certification of administrators by the State Board for Educator Certification (SBEC) shall be based on the following requirements.

(1) A program for alternative certification of administrators is to be developed collaboratively and may include, in addition to local education agencies, institutions of higher education with approved administrator preparation programs and/or education service centers. The programs may be in cooperation with professional associations or consortia, and must be delivered through Texas public schools.

(2) The three certificates that may be earned through an alternative certification program are campus principal (level specific

- elementary, middle/junior high, or high school), district level midmanagement administrator, and superintendent.

(3) Individuals admitted into an approved program shall be recommended to the SBEC for a term certificate that is valid only while participating in an approved program for two school years and may be extended for one additional school year under extenuating circumstances.

(4) An individual may be recommended by the designated program director and the supervising mentor administrator for administrator certification based on satisfactory completion of requirements of the approved program.

(b) Requirements for approved plan. Appropriate sponsors as identified in subsection (a)(1) of this section are required to submit a collaboratively developed plan to be approved by the SBEC before implementation. The plan must cover the following requirements.

(1) Participating school districts, colleges, or universities must be accredited.

(2) The plan must include an approved program budget that indicates commitment to the program through adequate funding.

(3) The plan must designate a program director with adequate qualified staff to assure appropriate:

(A) screening;

(B) preparation, as indicated by vitae of personnel delivering this component;

(C) mentoring, as indicated by vitae of individual(s) serving as mentor(s);

(D) program supervision as indicated in the ratio of supervising mentors to intern administrators; and

(E) evaluation.

(4) The plan must include a calendar of program activities for each school year that the program is approved. The calendar must include a timeline for accepting candidates into a cycle to assure adequate time for preassignment screening and professional development, scheduled preparation for intern administrators, and orientation and training for mentor administrators.

(5) The program components must include, but need not be limited to:

(A) an assessment profile that includes the core knowledge base listed in subparagraph (B) of this paragraph to evaluate the skills and knowledge of each candidate for certification; and

(B) a core knowledge base that encompasses instructional leadership; interpersonal and group dynamics skills; curriculum and instruction management; performance evaluation; organizational theory, fiscal management; and legal and ethical aspects of education.

(6) The program must include a mentor-directed comprehensive internship of not less than two school years to meet the specific needs of the intern administrator including:

(A) campus principal (level specific - elementary, middle/junior high, or high school):

(i) assignment as principal or intern at appropriate campus for certification; and

(ii) designation of a mentor who is serving or has served as a principal and whose professional expertise and certification encompasses the assignment of the intern;

(B) district level midmanagement administrator:

(i) assignment as midmanagement administrator or intern in appropriate area for certification; and

(ii) designation of a mentor whose professional expertise and certification encompasses the assignment of the intern; or

(C) superintendent:

(i) assignment as superintendent or intern at the district level for certification; and

(ii) designation of a mentor who is serving or has served as a superintendent and whose professional expertise and certification encompasses the assignment of the intern.

(7) The plan must designate a mentor administrator who has demonstrated exemplary administrative performance and who has served as an administrator for at least five years in the area of certification sought by the intern.

(8) Preassignment screening, including a criminal record review, must be initiated for interns.

(9) The plan must describe a procedure for program monitoring, review, and evaluation.

(10) The program must provide ongoing counseling, guidance, and remedial preparation as needed.

(11) Follow-up data that attest to program and intern effectiveness must be maintained.

(c) Requirements for admission into the program. Each applicant must meet the following minimum requirements before admission into the alternative certification program for administrators.

(1) Applicants must possess basic skills in mathematics, reading, and writing as evidenced by acceptable scores on the state-mandated basic skills test.

(2) Applicants must have prior preparation and education expertise as follows.

(A) Currently certified educators must have:

(i) a graduate degree from a regionally accredited institution of higher education with a grade point average of no less than 3.0 on a 4.0 system and at least three years of successful experience in a position in a Texas public school district that included leadership responsibilities for a minimum of three other professionals who possess at least a baccalaureate degree; or

(ii) a baccalaureate degree from a regionally accredited institution of higher education with a grade point average of no less than 3.0 on a 4.0 system; completion of training in effective instructional practices, leadership ability, curriculum development, and communications skills; and at least five years of successful experience in a position in a Texas public school district that included leadership responsibilities for a minimum of three other professionals who possess at least a baccalaureate degree.

(B) Individuals who do not hold teacher certification must have:

(i) a graduate degree from a regionally accredited institution of higher education with a grade point average of no less than 3.0 on a 4.0 system, completion of management/leadership training, and at least three years of successful experience in organizational leadership that included leadership responsibilities for a minimum of three other professionals who possess at least a baccalaureate degree; or

(ii) a baccalaureate degree from a regionally accredited institution of higher education with a grade point average of 3.0 on a 4.0 system, completion of management/leadership training, and at least five years of successful experience in organizational leadership that included leadership responsibilities for a minimum of three other professionals who possess at least a baccalaureate degree.

(3) When appropriate, and with the approval of the executive director of the SBEC, an approved program sponsor may waive the grade point average requirement and/or the experience requirement for a candidate with documented justification for the consideration of other relevant criteria.

(d) Requirements for comprehensive training. During the program, each intern administrator must complete preparation of at least 18 semester hours from a regionally accredited institution of higher education with an approved administrator preparation program, or 270 contact hours, or a combination of both in a ratio of 15 contact hours to one semester hour. Intern administrators who have completed formal training in program components and whose assessment profiles indicate proficiency in subjects included in this preparation program will not be required to duplicate that portion of the curriculum that addresses those proficiencies. Preparation must include knowledge of the following components:

- (1) effective schools design;
- (2) understanding of effective teaching practices;
- (3) development of curriculum and instructional design models;
- (4) integration of critical thinking and problem-solving skills in leadership development;
- (5) application of ethical and legal principles; and
- (6) implementation of financial management skills.

(e) Training requirements for placement as an intern. Before assignment as administrator or intern, each applicant accepted into the alternative certification program shall complete at least nine semester hours, 135 contact hours, or a combination thereof as follows.

(1) For currently certified educators, professional development includes the areas of leadership, performance evaluation, organizational theory, financial management in education, and/or legal and ethical aspects of education identified as needs based on the individual's assessment profile.

(2) For individuals who do not hold teacher certification, professional development includes the areas of instructional leadership, curriculum and instruction management, performance evaluation, financial management in education, and/or legal and ethical aspects of education identified as needs based on the individual's assessment profile.

(f) Requirements for certification. Before certification, each intern administrator must:

(1) complete the approved internship and specified program of instruction;

(2) participate in and achieve acceptable scores on instructional leadership training (ILT);

(3) demonstrate effectively the application of knowledge and skills indicated in subsections (b)(5)(B) and (e) of this section with individually designed performance indicators;

(4) possess acceptable scores on the appropriate state-adopted Examination for the Certification of Educators in Texas (ExCET);

(5) perform successfully on an approved local school district administrator appraisal system adopted under the Texas Education Code (TEC), §21.354, and §§150.1001 and 150.1005-1006 of this title (relating to Educator Appraisal); and

(6) receive a recommendation from the designated program director and the supervising mentor that is submitted to the SBEC for certification.

(g) Requirements for approval, review, and reapproval of programs.

(1) The SBEC may recommend a limited number of plans for alternative administrator certification. Initial approval of proposed alternative administrator certification programs will not extend more than two years, and will be subject to review by SBEC staff during all facets of program implementation. In subsequent years, after evaluation of the program by the SBEC, plans may be approved for a period not to exceed four years subject to annual review.

(2) The designated director of an approved alternative administrator certification program shall submit to the executive director of the SBEC, an annual report that includes the names of candidates in the program and other information that may be required, including monitoring, review, and evaluation of the program.

(3) Programs for alternative administrator certification are subject to review by the SBEC.

(4) Request for reapproval of alternative administrator certification programs must include the percentage of interns receiving acceptable ExCET scores and demonstrating application of knowledge and skills as indicated in subsections (b)(5)(B) and (e) of this section. The SBEC shall consider these program results when granting reapproval requests.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter L. Postbaccalaureate Requirements for Persons Seeking Initial Teacher Certification through Approved Texas Colleges and Universities  
**19 TAC §230.391**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, and 21.050 which require the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification as well as the classes of certificates offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.391. General Program Requirements.*

(a) General provisions. Colleges and universities with approved programs for teacher education may admit to a special program and recommend for teacher certification candidates who meet the requirements of this section. A certification plan shall be developed for a candidate under the requirements of this section to be completed expeditiously by the candidate in a period of three calendar years. A plan may be renewed at the request of the candidate based upon justification acceptable to the college or university.

(b) Admission. Each candidate for an initial teaching certificate who has at least a bachelor's degree from a regionally accredited institution must meet the following qualifications for admission to an approved program:

(1) an overall grade point average of at least 2.5 on a 4.0 system at the baccalaureate level; and

(2) demonstration of basic skills on a state-mandated test in mathematics, reading, and writing in accordance with §230.5 of this chapter (relating to Educator Assessment).

(c) Certification. Each candidate must meet the following qualifications for the certificate to be earned.

(1) Candidates must demonstrate skill in educational computing and technology through either successful completion of course work or proficiency review.

(2) Candidates must demonstrate speech competency (with emphasis on oral proficiency in the English language) through either successful completion of course work or proficiency review.

(3) Successful completion of the minimum number of semester hours is required, including upper-division hours, for teaching specialties as specified for the respective certificate options in Subchapter G of this chapter (relating to the Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements) to the extent that a reasonable representation of the essential knowledge and skills adopted by the State Board of Education under the Texas Education Code (TEC), §28.002(c)-(d), is identifiable and that guidelines of relevant learned societies are addressed. For secondary certification, a single teaching field of 24 semester hours with 12 upper-division hours is permissible.

(4) For the elementary certificate, six semester hours of reading must be included in the plan, and for all other certificates, reading must be included in the plan. Reading instruction will be developmental and corrective, and will incorporate identification,

teaching strategies, and resources for dyslexia and other reading disorders.

(5) Additional semester hours in education may be allowed for certification in bilingual education, special education, and early childhood education.

(6) Successful completion of 18 semester hours of professional development is required, which shall include, but not be limited to:

(A) core studies, including legal aspects of teaching with emphasis on the recognition of, and response to, signs of abuse and neglect in children, special education, multicultural education, media, and technology;

(B) methodology inclusive of curriculum and planning, developmental and corrective reading, including dyslexia and other reading disorders, classroom management and discipline, teaching strategies, and human growth and development;

(C) a pre-student teaching/pre-internship student contact experience; and

(D) a student teaching experience of at least eight weeks of full days or 16 weeks of half days in a school or schools accredited by the Texas Education Agency (TEA) under the Texas Education Code (TEC), §39.073, or a field internship of one school year where the intern may be employed as a teacher of record and where the intern is jointly supervised by the college or university and a cooperating school district accredited by the TEA.

(7) Candidates must demonstrate expertise in the teaching specialty and professional studies as evidenced by passing scores on the appropriate state-adopted examination for certification in accordance with §230.5 of this chapter (relating to Educator Assessment).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter M. Certification of Educators in General

**19 TAC §§230.411-230.414**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(2) and (4), 21.044, 21.048, 21.050, and 22.082 which require the State Board for Educator Certification to propose rules that establish the academic, internship, and examination requirements for all candidates for certification; specify the classes of certificates offered; and to obtain all criminal history information that relates to an applicant for certification.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.411. Purpose.*

The purpose of certifying public school educators is to identify qualified and professionally prepared individuals. The certification shall comply with Subchapter B, Chapter 21, TEC, and rules adopted by the State Board for Educator Certification under that statutory authority.

*§ 230.412. Classes of Certificates.*

(a) There are three classes of Texas teacher certificates: provisional, professional, and temporary. An applicant for a teacher certificate must satisfy the requirements specified in this chapter. Each certificate shall identify the level and area for which the applicant is qualified under State Board for Educator Certification (SBEC) rules.

(b) The provisional certificate is permanent and valid for life unless canceled by lawful authority.

(c) The professional certificate represents preparation and experience in addition to the requirements of the provisional certificate. The professional certificate is permanent and valid for life unless canceled by lawful authority.

(d) An applicant for a temporary certificate must satisfy the requirements specified in Subchapter O of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States), Subchapter J of this chapter (relating to Graduate Education Programs for Professional Certification), Subchapter Q of this chapter (relating to Permits), or Subchapter A of this chapter (relating to Educator Preparation Accountability System) for individuals who have a severe hearing impairment. The certificate identifies the period of validity.

(e) The certificates issued shall be:

- (1) elementary;
- (2) high school;
- (3) special subject - all levels;
- (4) special education;
- (5) vocational education; and
- (6) professional service - areas provided by Foundation School Program law.

*§230.413. General Requirements.*

(a) The only credits and degrees acceptable for certification of all educators are those earned from and conferred by institutions of higher education that at the time were accredited or otherwise approved by a state department of education, a recognized governmental organization, or a recognized regional accrediting organization. Out-of-state institutions that offer teacher education programs or courses in Texas must be approved by the State Board for Educator Certification (SBEC). All credit hour requirements for certification are semester hours or their equivalent.

(b) An applicant for a Texas teacher certificate must:

- (1) be at least 18;
- (2) be of good moral character. The SBEC may refuse to issue a teaching certificate to a person convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities

of the teaching profession. See §230.414 of this chapter (relating to Teaching Certificates for Persons with a Criminal Background);

(3) be willing to support and defend the constitutions of the United States and Texas;

(4) be able to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching;

(5) register for and complete all appropriate examinations prescribed by the SBEC in §230.5 of this chapter (relating to Educator Assessment) for the educator preparation program completed; and

(6) satisfy one or more of the following requirements:

(A) complete all academic and examination requirements of an approved program specified in Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements) and be recommended for certification through an approved professional educator preparation program;

(B) complete all academic and examination requirements of an approved program specified in Subchapter H of this chapter (relating to Alternative Certification of Teachers) and be recommended for certification through an approved alternative certification program;

(C) qualify under Subchapter O of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States);

(D) qualify under §230.437 of this chapter (relating to Issuance of Certificates Based on Examination); or

(E) qualify for vocational education certificates based on skill and experience specified in Subchapter P of this chapter (relating to Requirements for Provisional Certificates and Specialized Assignments or Programs).

(c) To be certified to teach at the secondary level, a person completing an approved program specified in Subchapter G of this chapter must attempt all appropriate portions of the Examination for the Certification of Educators in Texas (ExCET) prescribed by the SBEC and pass the appropriate professional development examination and a minimum of one content specialization portion of the ExCET.

(1) Secondary certification may be authorized in each subject area for which an applicant passes the appropriate content specialization examination.

(2) Under this subsection, a person who holds a valid elementary certificate and has at least one year of classroom teaching experience may be recommended for certification at the secondary level with only one teaching field identified in §230.193 of this chapter (relating to Professional Teacher Certificate-Secondary).

(d) To be certified to teach at the elementary level, a person completing an approved program specified in Subchapter G of this chapter must attempt all appropriate portions of the ExCET prescribed by the SBEC and pass the appropriate professional development examination and the elementary comprehensive portion of the ExCET.

(1) In addition to the examination requirements specified in this subsection, a person recommended for elementary certification under Option III-Bilingual Education, Option III-Generic Special Education, or Option IV-Early Childhood Education based on §230.191

of this chapter (relating to Preparation Required in All Programs) must complete the appropriate content specialization portion of the ExCET.

(2) A person who does not pass the appropriate content specialization portions of the ExCET but satisfies all other requirements specified in this subsection may be recommended for the appropriate provisional elementary self-contained certificate.

(e) A person who satisfies all requirements for initial teacher certification except successful completion of examination requirements prescribed by the SBEC and stipulated in §230.5 of this chapter (relating to Educator Assessment) may be assigned on a nonrenewable permit valid for no more than one year.

#### *§230.414. Certificates for Persons with Criminal Backgrounds*

(a) Under Texas Civil Statutes, Article 6252-13c, the commissioner of education may suspend or revoke a certificate or the State Board for Educator Certification (SBEC) may refuse to issue a certificate to a person convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities of the education profession.

(b) A crime may be considered to relate directly to the duties and responsibilities of the education profession when:

- (1) the crime involves moral turpitude;
- (2) the crime involves any form of sexual or physical abuse of a minor or student or other illegal conduct with a minor or student;
- (3) the crime involves conduct affecting students, parents of students, fellow employees, or professional colleagues;
- (4) the facts underlying the crime would support a felony conviction for possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Texas Civil Statutes, Article 4476-15;
- (5) the crime involves school property or funds;
- (6) the crime involves any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
- (7) the crime occurs wholly or in part on school property or at a school-sponsored activity; or
- (8) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct.

(c) Before a certificate may be denied under this section, the SBEC shall notify the applicant in writing of the intent to deny the certificate and the reasons for the denial, and the applicant shall have an opportunity to be heard. The SBEC's initial denial of a certificate may be appealed. Hearings under this subchapter will be subject to the rules governing hearings before the commissioner of education in Chapter 157, Subchapter AA of this title.

(d) The procedure for suspension and revocation of a certificate or permit under this section shall comply with Chapter 157 of this title (relating to Hearings and Appeals).

(e) Upon paying the fee for a provisional or professional teacher certificate, an individual academically qualified to teach in the public schools of this state may be certified under this subsection

to serve as a teacher only in a correctional facility operated by an agency or political subdivision of the state.

(1) An entity operating a correctional facility under contract with the state or a political subdivision of the state shall be deemed an agency or political subdivision of the state under this rule.

(2) Any certificate issued under this subsection shall contain and prominently exhibit express language limiting the validity of the certificate to correctional facilities only.

(3) An individual who is incarcerated in a correctional facility operated by an agency or political subdivision of the state shall be ineligible for certification under this subsection for the period of incarceration.

(4) This subsection does not supersede Texas Department of Criminal Justice policy related to employment of personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter N. Certificate Issuance Procedures

### **19 TAC §§230.431-230.438**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(4) and (c), and 21.048 which require the State Board for Educator Certification to propose rules that specify the standards, assessments, and fees required for the issuance of an educator certificate.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

#### *§230.431. Procedures in General.*

(a) The State Board of Educator Certification (SBEC), in compliance with board rules, shall issue appropriate certificates to qualified individuals who meet all requirements.

(1) The certificate shall identify the name of the holder, the class of the certificate, and the level and specific areas for which the individual is certified, and bear the signature of the SBEC chair and executive director.

(2) A certificate that is issued shall be transmitted to the applicant as expeditiously as possible.

(b) Permanent records of all certificates, permits, and supporting documentation shall be maintained by the SBEC.

#### *§230.432. Graduates of Approved Professional Educator Preparation Programs.*

An appropriate certificate shall be issued to each individual who completes an approved professional educator preparation program

and is recommended by the entity. With the assistance of the applicant, the certification officer representing the approved program shall submit to the State Board for Educator Certification:

- (1) an accurately completed application and recommendation form; and
- (2) the designated fee.

*§230.433. Duplicate Certificates.*

A duplicate certificate shall be issued when the State Board for Educator receives an appropriately completed application form and fee.

*§230.434. Effective Dates of Certificates and Permit Issuance.*

- (a) The issuance dates of certificates.

(1) The issuance date of a certificate evaluated by the State Board for Educator Certification (SBEC) shall be the date the applicant signed the application. The date of issuance shall not precede the date all certification requirements are completed.

(2) The issuance date of a certificate recommended by an approved professional educator preparation entity shall be the date the recommending entity verifies that the applicant has satisfied all certification requirements.

(3) A certificate shall not become effective more than 60 days before the SBEC receives the application, and may not precede the date all degree and examination requirements are completed.

(4) A certificate shall be valid for the entire month in which it is issued.

- (b) The effective dates of permits.

(1) A permit shall become effective on the date the superintendent or the authorized representative signed the application, provided the SBEC or the appropriate education service center (ESC) receives the application within 60 days of that date.

(2) If the application is completed and signed by the applicant and superintendent or authorized representative on the date teaching duties begin, it may be kept in the school district's files until all materials for submission are acquired. A permit held by a district shall not become effective more than 60 days before the SBEC or the appropriate ESC receives the application.

(3) The district shall be notified regarding eligibility for the permit. Coverage will not be provided to districts for the employment of individuals who are ineligible for the permit requested.

(c) The authority to alter dating procedures. A certificate or permit may become effective more than 60 days before the SBEC or the appropriate ESC receives an application if the appropriate official assumes responsibility for the delay or documents it in writing.

*§230.435. Fees for Certification Services.*

(a) Fees for certification services shall be based on a study conducted periodically by the State Board for Educator Certification of the actual costs of the services.

(b) The fees for authorizing a permit shall be paid by the requesting school district.

*§230.436. Schedule of Fees for Certification Services.*

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

- (1) Paraprofessional certificate - \$30.

(2) Provisional and professional certificates, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved teacher preparation entity or State Board for Educator Certification authorization; or extension or conversion of certificate - \$75.

(3) Probationary certificate based on recommendation by an approved teacher preparation entity or Texas public school district - \$50.

(4) Duplicate of certificate or change of name on certificate - \$45.

(5) Review of credentials requiring analysis and research of test history on the Examination for the Certification of Educators in Texas (ExCET) and eligibility for certification under §230.437 of this subchapter (relating to Issuance of Certificates Based on Examination) (nonrefundable) - \$75.

(6) Review of credentials requiring analysis and research of college transcripts and/or out-of-state certificate programs (nonrefundable) - \$75.

(7) Addition of certification based on completion of appropriate examination and/or internship requirements specified in §230.437 of this subchapter (includes the nonrefundable credential review fee of \$75) - \$150.

(8) Initial certificate based on certificate issued by another state department of education (includes the nonrefundable credential review fee of \$75) - \$125.

(9) Initial permit, initial noncertified instructor's permit, reassignment on permit with a change in level of target certificate, or renewal of permit on a hardship basis (nonrefundable) - \$75.

(10) Renewal in the school district of a permit at the same target certificate level and initial activation, or renewal in the same school district of a temporary classroom assignment permit - no fee.

*§230.437. Issuance of Certificates Based on Examination.*

(a) General provisions. A teacher who holds a valid classroom teaching certificate and a bachelor's degree may qualify for an additional teaching field or certification to teach at another level by passing the appropriate Examinations for the Certification of Educators in Texas (ExCET) for that subject. The rule shall not be used to qualify an individual for:

- (1) initial certification;
- (2) vocational certification based on skill and experience;
- (3) professional service certification; or
- (4) certification for which no ExCET requirement has been developed.

(b) Adding additional secondary teaching fields. A teacher who holds a secondary certificate may qualify for additional certification at the secondary level by passing the appropriate ExCETs for that secondary teaching subject listed as part of the required curriculum under the Texas Education Code (TEC), §28.002(a).

(c) Additional certification for a different level or subject area. A teacher who holds a valid classroom teaching certificate may qualify for additional certification in a subject or at a level not covered by the teacher's existing certificate by:

(1) passing the appropriate examination requirements for that subject; and

(2) successfully completing a one-year internship supervised by an experienced, certified teacher who teaches at that level or in that subject area. A teacher who holds an all-level classroom certificate and is seeking basic elementary or secondary certification under this subsection is exempt from the internship requirement. The internship requirement may not be waived for a teacher seeking certification to serve or teach special populations.

(d) District requirements for approving individuals seeking additional certification. A school district that employs a teacher who is qualifying for additional certification, but is not certified for that specific assignment, must document the following:

(1) that the school district is accredited by the Texas Education Agency under the Texas Education Code (TEC), §39.073;

(2) that the school district, by providing adequate funding, a sufficient number of qualified supervising teachers, and other resources needed to deliver internships, is committed to individuals seeking additional certification;

(3) that the school district provides time for the supervising teacher and the intern to observe each other and to conduct follow-up conferences;

(4) that each eligible candidate serving as teacher of record is assigned to an internship no later than October 1 of the school year in which the internship is to be completed; and

(5) that the school district annually reports the assignment of each intern who is serving as teacher of record in the district through the Public Education Information Management System (PEIMS).

(e) The supervising teacher.

(1) The supervising teacher shall teach the subject or at the grade level in which the intern seeks additional certification, and shall be experienced and certified in the subject or at that level.

(2) The supervising teacher shall have adequate time to assess the intern through formative instruments and determine appropriate activities for the intern based on the needs of the intern as determined by the assessment and by input from the intern.

(f) The internship.

(1) The intern shall have time during the instructional day to observe the supervising teacher and other experienced teachers in the subject or at the level in which the intern seeks certification.

(2) The intern must receive two appraisals.

(3) The internship shall begin no later than October 1 and extend through the last day of instruction.

(4) A teacher who completes a year of classroom teaching experience in the subject or assignment area and at the grade level of the certificate sought is exempt from the internship requirement.

(g) Recommendation for additional certification.

(1) To be eligible for certification in a subject area or at a level for which an internship is required, the intern must receive appraisals from two appraisers, verification of successful

completion of the internship, and a recommendation from the employing superintendent.

(2) To be eligible for certification based on creditable experience in lieu of an internship, the teacher must have verification of the experience, evidence of having held a valid classroom teaching certificate at the time the experience was earned, and a recommendation from the employing superintendent.

#### *§230.438. General Provisions.*

A valid provisional or professional certificate shall remain permanent and shall be acceptable for employment or assignment to the certificate areas listed on the certificate. An individual who holds a provisional or professional certificate may obtain an appropriate certificate authorized under standards for professional educator certification subsequently adopted by the State Board for Educator Certification (SBEC):

(1) meeting the requirements for the type of certificate desired and applying to the SBEC on the form prescribed by the board; and

(2) paying the appropriate fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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## Subchapter O. Texas Educator Certificates Based on Certification and College Credentials from Other States

### **19 TAC §§230.461-230.463**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(5) and 21.052 which require the State Board for Educator Certification to propose rules that provide for the issuance of an educator certificate to a person holding a similar certificate issued by another state.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

#### *§230.461. General Provisions.*

(a) A Texas educator certificate may, based on college credentials and standard certification issued by another state department of education, be issued to an individual who meets appropriate requirements specified in §230.413 of this chapter (relating to General Requirements) and elsewhere in this subchapter.

(b) The degree and certificate from another state presented by an applicant for Texas certification must be considered standard by the issuing state department of education and may not be a temporary permit, a substandard certificate, or a credential issued by a city or school district. In this subchapter, the phrase "standard

certificate" means certification issued by another state department of education for which no academic deficiencies are indicated. Specific examination or renewal requirements shall not be considered academic deficiencies.

(c) A statement, approval letter, or certification entitlement card issued by another state department of education specifying eligibility for full certification upon employment or completion of specified examination requirements shall have the same standing as a standard certificate.

(d) The certificate and areas of certification from another state presented by an applicant for Texas certification must be equivalent to a credential and certification areas approved by the State Board for Educator Certification. The board shall identify the certification areas for which the applicant qualifies in Texas.

*§230.462. Requirements for Texas Certificates Based on Certification from Other States.*

(a) An applicant for a Texas certificate based on certification and college credentials from another state must pass the appropriate examination requirements specified in §230.5 of this Chapter (relating to Educator Assessment).

(b) If all certification requirements are met except the appropriate examination requirements, the applicant may request issuance of a temporary certificate, valid for 12 months, in one or more certification areas authorized on the out-of-state certificate.

(1) An applicant who holds a standard out-of-state special subject certificate may be issued the equivalent Texas certificate in that special subject area.

(2) An applicant who holds a standard out-of-state professional service certificate may be issued the equivalent Texas certificate in that professional service area. The preparation program upon which the out-of-state professional service certificate is based must require the individual to have completed requirements for a basic classroom teaching certificate.

(c) A temporary certificate authorized under this subchapter may be converted to the appropriate certificate class after all requirements, including examination requirements, have been satisfied.

(d) An applicant issued a temporary certificate under this section who does not complete the appropriate portions of the Examination for the Certification of Educators in Texas (ExCET) or establish eligibility for a provisional or professional certificate during the validity of the temporary certificate, is not eligible for any type of certificate or permit authorizing employment for the same certified level or areas until he or she has satisfied the appropriate examination requirements.

(e) An employing superintendent may apply for continued employment eligibility for a teacher on a nonrenewable permit if the teacher does not pass the professional development portion of the ExCET but does pass the appropriate content specialization portions of the exam during the validity of the temporary certificate. The nonrenewable permit shall be valid for no more than 12 months from the date the individual first attempts the professional development portion of the ExCET.

(f) An applicant shall not be required to complete the content specialization portion of the ExCET in a certification area for which he or she does not seek continued Texas certification.

(g) An applicant issued a temporary certificate under this section who, during or subsequent to the validity of the certificate, establishes eligibility for a provisional or professional certificate may:

(1) request a new temporary certificate in another certification area based on a certificate from another state; or

(2) reapply for another temporary certificate in an area previously authorized on a temporary certificate, provided the applicant was not assigned to the area or has not attempted the appropriate ExCET requirements for that area.

*§230.463. Requests for Evaluation of College Credentials.*

(a) At the request of an employing local school district, the State Board for Educator Certification (SBEC) will evaluate an applicant's credentials for an area that is not identified on the certificate from another state, provided it is the applicant's initial assignment area in a Texas public school. The SBEC will issue the Texas certificate when the applicant completes the deficiencies outlined and passes the appropriate Examination for the Certification of Educators in Texas (ExCET).

(b) Requests to evaluate an applicant's credentials for areas of certification that are not identified on the out-of-state certificate or are not initial assignment areas in a Texas public school must be directed to a college or university with an approved preparation program for the certificate sought. The Texas certificate will be issued upon recommendation by the institution.

(c) An individual who does not hold a standard certificate issued by another state department of education must have his or her credentials evaluated through a college or university approved for professional educator preparation and be recommended by the institution for certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

TRD-9613897

Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3004



**Subchapter P. Requirements for Provisional Certificates and Specialized Assignments or Programs**

**19 TAC §§230.481-230.484**

These sections are proposed under Texas Education Code (TEC), §§21.041(b)(2), (4), and (6) which require the State Board for Educator Certification to propose rules that specify the classes of certificates offered, the requirements for the issuance of an educator certificate, and to provide for special or restricted certification of educators.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.481. General Provisions.*

(a) Provisional teacher certificates, provisional special education certificates, provisional vocational certificates, and endorsement areas based on completion of an approved teacher education program shall require:

- (1) at least a bachelor's degree and, for certain vocational certificates, preparation and experience in a skill area as specified;
- (2) recommendation by an approved teacher education institution; and
- (3) submission of a passing score on a comprehensive examination prescribed by the State Board for Educator Certification (SBEC) under §230.5 of this chapter (relating to Educator Assessment).

(b) Provisional vocational certificates based on experience and preparation in a skill area shall require:

- (1) preparation and experience in a skill area and, for certain vocational certificates, completion of a bachelor's degree;
- (2) recommendation by a teacher education institution approved to offer professional development courses required for vocational certification; and
- (3) satisfactory performance on the test prescribed by the SBEC under §230.5 of this chapter.

*§230.482. Specific Requirements for Provisional Certificates and Endorsements.*

(a) The following certificates require completion of an approved teacher education program offered under Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements):

- (1) provisional teacher certificate—elementary;
- (2) provisional teacher certificate—secondary;
- (3) provisional teacher certificate—all level;
- (4) provisional special education certificates;
- (5) provisional agricultural science and provisional horticultural science certificates; and
- (6) provisional home economics certificate.

(b) The provisional marketing education certificate requires one of the following:

- (1) completion of an approved program offered under §230.198 of this chapter (relating to Vocational Marketing Education Certificates); or
- (2) completion of requirements in §230.483(b) of this subchapter (relating to Specific Requirements for Provisional Vocational Certificates Based on Experience and Preparation in Skill Areas).

(c) All endorsements require completion of an approved program offered under §230.199 of this chapter (relating to Endorsements) or completion of requirements under provisions of §230.437 of this chapter (relating to Issuance of Certificates Based on Examination).

*§230.483. Specific Requirements for Provisional Vocational Certificates Based on Experience and Preparation in Skill Areas.*

(a) Provisional health science technology certificate.

(1) The provisional health science technology certificate shall be based on preparation and experience in the skill area and qualify the teacher to teach preemployment laboratory and cooperative training classes.

(2) Certification shall be based on experience and academic preparation in the skill area and require the following:

(A) a bachelor's degree or an associate's degree from an accredited institution;

(B) licensure, certification, or registration by a nationally recognized accrediting agency as a professional practitioner in one or more health occupations for which instruction is offered. The preparation program for licensure or certification must require at least two years of formal education;

(C) completion of State Board for Educator Certification (SBEC) requirements in the United States and Texas Constitutions; and

(D) approval, by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate, of two years of wage earning experience in a licensed hospital or health agency, in addition to that required to be registered or certified.

(3) The provisional health science technology certificate shall require a professional development sequence that includes the following:

(A) developing, organizing, and using instructional materials;

(B) methods of teaching vocational subjects;

(C) human relations for vocational industrial instructors;

(D) aims and objectives of vocational education;

(E) organizing and coordinating vocational industrial cooperative programs;

(F) problems in industrial cooperative education; and

(G) two years of teaching experience on emergency permits in the area of health science.

(b) Provisional marketing education certificate.

(1) The provisional marketing education certificate may be based on the program requirements specified in Subchapter G of this chapter (relating to Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements) or preparation and experience in the skill area.

(2) Certification based on preparation and experience in the skill area shall require:

(A) a bachelor's degree from an accredited institution with six semester hours of courses in retailing and marketing;

(B) completion of SBEC requirements in the United States and Texas Constitutions;

(C) two years of wage-earning experience approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in one or more of the marketing occupations;

(D) 12 semester hours of professional development from an institution with an approved program in marketing education that includes the following:

- (i) history and philosophy of vocational education;
- (ii) methods of teaching marketing and distributive education;
- (iii) organizing and managing marketing education programs;
- (iv) techniques for coordinating marketing education programs; and

(E) two years of teaching experience on emergency permits in the area of marketing education.

(3) The provisional marketing education certificate shall establish eligibility to teach cooperative training, coordinated vocational-academic education, preemployment laboratory, and vocational education for the handicapped in marketing and distributive education.

(c) Provisional office education certificate.

(1) Certificates issued. The provisional office education certificate shall be based on preparation and experience in the skill area and professional development. The certificate shall be required to teach office education courses taught by the cooperative or preemployment laboratory method of instruction.

(2) Academic specialization. The provisional office education certificate shall require the following:

(A) a bachelor's degree in business/business education or the equivalent of a minor in the course area to be taught;

(B) completion of SBEC requirements in the United States and Texas Constitutions; and

(C) one of the following:

(i) two years of wage-earning experience in an office occupation approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in office education; or

(ii) three to six semester hours of credit for an office occupation internship approved by a college or university approved to prepare teachers for the vocational certificate in office education.

(3) Professional development. The professional development requirements for the provisional office education certificate shall be completed in an approved institution and shall require the following:

(A) 6-12 semester hours of professional development that include:

- (i) instructional strategies;
- (ii) managing office education programs; and

(iii) six semester hours in the course area to be taught that are recommended by the college or university approved to prepare teachers for office education;

(B) completion of a workshop for new teachers sponsored by the Texas Education Agency (TEA); and

(C) one year of teaching experience on an emergency permit for a teacher who does not have one or more years of teaching experience at the secondary level.

(d) Provisional occupational orientation certificate.

(1) General provisions. The provisional occupational orientation certificate shall be based on preparation and experience in occupational fields for which vocational education is offered and professional development.

(2) Academic specialization. The provisional occupational orientation certificate shall require that an individual:

(A) hold a bachelor's degree from an accredited institution;

(B) complete SBEC requirements in United States and Texas Constitutions;

(C) to teach occupational investigation, have two years of wage-earning experience other than teaching, approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in one or more occupations for which occupational education may be conducted; and

(D) to teach vocational education for the handicapped (VEH) occupational exploration, have two years of wage-earning experience other than teaching, approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in the occupational field or cluster for which instruction is offered.

(3) Professional development. The professional development requirements shall be completed in an approved institution and must include:

- (A) history and principles of vocational education;
- (B) methods and media for teaching vocational subjects;
- (C) occupational and vocational education information;
- (D) planning and organizing programs of vocational guidance;
- (E) organizing and managing the class and laboratory; and

(F) two years of successful teaching experience on emergency permits in the area of vocational occupational orientation.

(e) Provisional trades and industry certificates. A provisional trades and industry certificate shall be based on preparation and experience in the skill areas to be taught and completion of specified professional development course work.

(1) Provisional trades and industry - preemployment laboratory certificate.

(A) Academic specialization.

(i) Option I. Option I requires:

(I) a bachelor's degree from an accredited institution;



(II) completion of SBEC requirements in the United States and Texas Constitutions; and

(III) three years of full-time wage-earning experience in one or more approved occupations for which instruction is offered. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.

(ii) Option II. Option II requires:

(I) a high school diploma or the equivalent;

(II) completion of SBEC requirements in the United States and Texas Constitutions; and

(III) five years of full-time wage-earning experience in one or more approved occupations for which instruction is offered, three of which must be in the predominate subject area. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.

(iii) Cosmetology teachers. Cosmetology teachers approved under Options I or II must satisfy the following additional requirements:

(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and

(II) hold a current cosmetology instructor's license issued by the Texas Cosmetology Commission.

(B) Professional development. The professional development requirements shall be completed in an approved institution and consist of:

(i) completion of a professional development sequence, that includes:

(I) developing, organizing, and using instructional materials;

(II) methods of teaching vocational subjects;

(III) human relations for vocational industrial instructors;

(IV) aims and objectives of vocational education;

(V) organizing and managing instructional environment; and

(VI) analysis and coursemaking; and

(ii) two years of successful experience teaching preemployment laboratory programs on emergency permits in the area of the certificate sought.

(2) Provisional trades and industry - cooperative training certificate.

(A) Academic specialization. The academic specialization requires:

(i) a bachelor's degree from an accredited institution;

(ii) completion of SBEC requirements in the United States and Texas Constitutions;

(iii) two years of teaching experience in a secondary school; and

(iv) three years of full-time wage-earning experience in one or more approved occupations for which instruction is offered, one year for which the individual must be continuously employed in a single occupation or trade. The experience must be approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate.

(B) Professional development. The professional development requirements shall be completed in an approved institution and consist of:

(i) completion of a professional development sequence that includes:

(I) developing, organizing, and using instructional materials;

(II) methods of teaching vocational subjects;

(III) human relations for vocational industrial instructors;

(IV) aims and objectives of vocational education;

(V) organizing and coordinating vocational industrial cooperative education programs; and

(VI) problems in industrial cooperative education; and

(ii) two years of successful experience teaching cooperative training programs on emergency permits in the area of the certificate sought.

(f) Approval of vocational education teachers based on prior experience and preparation in a skill area.

(1) Prospective vocational education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the employing superintendent or certification officer of a college approved to prepare teachers for the vocational certificate sought. The superintendent or certification officer shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection.

(2) Under this section, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40, but at least 20, hours per week shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) A deficiency plan specifying certification requirements shall be prepared by a college or university approved to offer course work for the vocational certificate sought.

(4) If the approved applicant is employed by the school district, the superintendent or designee shall apply for an emergency permit within 30 days of employment according to §230.504 of this chapter (relating to Specific Requirements for Initial Emergency Permits).

§230.484. *Eligibility Requirements for Specialized Assignments or Programs.*

(a) Eligibility to teach in specialized assignments or programs shall be determined based on completion of appropriate requirements specified in this section.

(b) No certificate or endorsement shall be issued beyond the certificate required for eligibility to teach in specialized assignments or programs specified in this section.

(c) Courses taken to satisfy eligibility requirements specified in this section may be taken concurrently with, but must be in addition to, courses required for the provisional certificate.

(d) Requirements for eligibility to teach in specialized assignments or programs shall be as follows.

(1) Vocational adjustment class.

(A) An individual must hold a valid Texas teaching certificate with special education endorsement, special education certificate, or a generic special education delivery system.

(B) An individual must have completed 60 clock hours of in-service training resulting in a certificate of completion and attendance from the in-service provider. The 60 clock hours of in-service training must include the following.

(i) Job development and job analysis.

(I) Job development. This session will include methods for screening the community job market, contacting employers, developing agreements with employers, developing training and employment sites for on-campus work experience and community-based employment (full- and part-time), and information about current employment laws.

(II) Job analysis. This session will include methods for conducting a detailed analysis of the requirements for a specific job. The analysis will include interviewing the employer and coworkers, observing someone performing the job, and possibly performing the job.

(ii) Student assessment and job match.

(I) Student assessment. This session will include introducing, selecting, and appropriately using available test instruments.

(II) Formal and informal approaches. This session will present methods of interpreting comprehensive vocational assessment data and alternative methods of evaluation, both formal and informal.

(III) Job match. This session will include techniques for matching a potential employee to the appropriate job. Using vocational assessment data, related student information, student behavior, employer expectations, and job requirements (job analysis) will be included. Related issues, such as location of the job site, training, and transportation will be addressed.

(iii) Job placement and job site training.

(I) Job placement. This session will include preparing the student and the employer/coworkers for introductions, interviews, and work place orientation. Related issues, such as services from other agencies, employer benefits, and tax credits will be addressed.

(II) Job site training. This session will include the techniques of indirect and direct instruction provided to a student placed on the job. Methods will include working with the employer during the training period, performing as or supervising a job coach, task analyzing the requirements of the job, developing a job site training plan, and managing behavior.

(iv) Sustaining employment. This session will include the skills and behaviors necessary for sustaining employment, methods of reducing direct instruction by school personnel, and transferring training responsibilities to an adult service provided for extended services. Special attention will be given to the generic work-related behaviors critical to getting and keeping a job.

(v) Follow-along and transition.

(I) Follow-along. This session will include the methods for ongoing evaluation of student progress, problem solving and intervention strategies, planning for graduation, follow-up of students who no longer receive direct instruction, and identifying effective procedures for long term follow-up of program graduates to evaluate the program's effectiveness.

(II) Transition. This session will include the process of helping a student make a smooth transition from school to adult life. Individual transition plans (ITP), parental involvement, and information about the services and responsibilities of other agencies that provide services to persons with disabilities will be included.

(C) Teachers assigned to this instructional arrangement before September 1, 1990, will not be required to satisfy the new criteria.

(D) Teachers assigned to this instructional arrangement after September 1, 1990, will have three years from the date of assignment to complete the new criteria.

(2) Agricultural science and technology.

(A) Horticulture. Eligibility to teach horticulture shall require a valid provisional certificate for horticultural sciences. No additional course or workshop shall be required for assignment to preemployment laboratory education (PELE) or vocational education for the handicapped programs (VEH) in horticulture.

(B) Cooperative training programs. Eligibility to teach cooperative training programs shall require a valid provisional certificate for agricultural science and one of the following:

(i) a workshop sponsored by the Texas Education Agency (TEA) that is designed to provide specialized training for teachers assigned to implement and conduct cooperative training programs; or

(ii) three semester hours of agriculture education in the area of the special agricultural science and technology program.

(C) Preemployment laboratory education and VEH. Eligibility to teach PELE or VEH shall require a valid Texas certificate for agricultural science and one of the following:

(i) a workshop sponsored by the TEA that is designed to provide specialized training for teachers assigned to teach preemployment; or

(ii) six semester hours of technical agriculture in the area of the special agricultural science and technology program.

(D) Courses and workshops. Agriculture education course work and workshops sponsored by the TEA shall be conducted by institutions approved for the preparation of agricultural science and technology teachers.

(3) Occupational home economics.

(A) Eligibility to teach occupational home economics shall require a valid certificate in home economics with an effective date of May 1, 1987, or later or a valid certificate in home economics plus one of the following:

(i) six semester hours of home economics education, emphasizing an all industry approach, to build instructional competencies in occupational home economics; or

(ii) current eligibility to teach specialized areas of home economics through cooperative, preemployment, coordinated-vocational academic education (CVAE) or VEH instructional settings, plus three semester hours of home economics education, emphasizing an all industry approach, to build instructional competencies in occupational home economics.

(B) All courses in home economics education must be completed in an institution approved for professional educator preparation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Mark Littleton

Executive Director

State Board for Educator Certification

Proposed date of adoption: November 1, 1996

For further information, please call: (512) 469-3004



## Subchapter Q. Permits

### 19 TAC §§230.501-230.507, 230.509-230.511

These sections are proposed under Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

#### *§230.501. General Provisions.*

(a) Under this subchapter, a superintendent who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials required for the assignment as specified in Subchapter U of this chapter (relating to Assignment of Public School Personnel). The superintendent must be able to:

(1) document the efforts the district has taken to employ a fully certified person in the position for which a permit is activated;

(2) verify that the district maintains an adequate support system and has assigned a teacher, certified in and assigned to the

same subject or level, to assist the permitted teacher as required. (A district shall not be required to provide a mentor for a degreed, certified teacher assigned on permit status if the teacher has one or more years experience within the district.); and

(3) verify that the teacher for whom the permit is activated has been advised of State Board for Educator Certification (SBEC) rules regarding permits and permit renewal requirements in this subchapter.

(b) The provisions of this subsection apply to a degreed, certified teacher who was employed by a district in the previous year or semester in an assignment for which he or she was fully certified.

(1) The teacher may not be assigned to a position that requires activating a permit unless:

(A) the teacher has given written consent to the activation of the permit; or

(B) because of fluctuations in enrollment or changes in course offerings, the teacher's previous assignment no longer exists and no alternative assignment for which the teacher is fully certified is available on that campus. If a permit is activated for a teacher under these circumstances, the teacher shall be offered the opportunity to return to his or her previous assignment or an alternative assignment for which the teacher is fully certified on that campus as soon as such an assignment is available. If a teacher accepts the assignment, the actual transfer of duties shall occur not later than the beginning of the next academic year.

(2) If a permit under this subsection is activated for a temporary staffing condition within 30 days of the opening of the school year or later during the contract year, the teacher is exempt from the requirement to complete additional coursework or examination requirements for certification for the remainder of the contract year for which the permit is activated. This exemption is not renewable, and a teacher continuing on an emergency permit for a second year must meet the full requirements of an emergency permit. A teacher who refuses to consent to activation of a permit under this subsection may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the permit. However, a teacher's refusal to consent shall not impair a district's right to implement a necessary reduction in force or other personnel actions in accordance with local district policy.

(c) A permit is authorized for the school district for a specific assignment and is not the property of the individual for whom the permit was activated.

(d) If a permit authorized by the SBEC is not used, the school district shall notify the appropriate education service center (ESC) in writing.

(e) A permit may be authorized on a hardship basis for an individual who does not meet all permit requirements only if approval has been granted and written notification received from the SBEC or a designated representative. The district must:

(1) document local conditions requiring the assignment of an individual who does not meet permit requirements;

(2) verify that the deficiencies for the certificate sought do not exceed 36 semester hours; and

(3) verify that the individual will be enrolled in the first available course listed on the deficiency plan.

*§230.502. Validity of Emergency Permits.*

(a) The validity dates of emergency permits activated and authorized under this subchapter are specified in §230.434 of this chapter (relating to Effective Dates of Certificates and Permit Issuance).

(b) An emergency permit is valid for the remainder of the school year for which it is activated and authorized by the State Board for Educator Certification (SBEC). The emergency permit must be submitted to the appropriate education service center (ESC) within 60 days from the date of assignment.

(c) An emergency permit authorized by the SBEC is valid for service only in the requesting school district and only for the assignments indicated on the permit application.

(d) The employment of an individual on the basis of an emergency permit may not exceed three years in the same assignment. An individual may serve in a specific assignment no more than two additional school years beyond the initial emergency permit. To continue beyond the initial permit year, the individual must comply with the renewal provisions specified in §230.506 of this subchapter (relating to Renewal Requirements).

*§230.503. General Eligibility Requirements for Emergency Permits.*

An individual for whom an emergency permit is activated must meet the following criteria.

(1) The individual must hold a bachelor's degree from an accredited institution of higher education.

(A) For a vocational assignment requiring certification based on both a bachelor's degree and experience in the occupational area to be taught, the individual must have completed the degree requirement and have specified work experience.

(B) An individual who does not hold a bachelor's degree must have a college deficiency plan submitted on the appropriate State Board for Educator Certification (SBEC) form verifying that the deficiencies required for the degree and certificate sought do not exceed 36 semester hours.

(C) For certain vocational assignments requiring certification based on skill and experience, the individual must have specified work experience in lieu of a degree.

(2) The individual must be at least 18.

(3) The individual must be able to speak and understand the English language sufficiently to use it easily and readily in conversation and teaching.

(4) The individual must be of good moral character. The SBEC may refuse to authorize an emergency permit for a person who has been convicted of a felony or misdemeanor crime that directly relates to the duties and responsibilities of the teaching profession. See §230.414 of this chapter (relating to Teaching Certificates for Persons with a Criminal Background).

*§230.504. Specific Requirements for Initial Emergency Permits.*

(a) General Provisions. An individual for whom an emergency permit is activated must:

(1) have completed the appropriate semester hours required for the permit sought as specified in this section; or, for de-greed, certified teachers, have passed the appropriate content specialization portions of the Examination for the Certification of Educators in Texas (ExCET) required for the target certificate; and

(2) have satisfied the appropriate experience requirement specified in this section for the permit sought.

(b) Assignments to elementary grades (regular students).

(1) Self-contained classroom, Grades 1-6. The individual must have completed 12 semester hours in a combination of subjects directly related to the elementary curriculum, or 12 semester hours in elementary education, or any combination of these areas of study.

(2) Self-contained classroom, prekindergarten-kindergarten.

(A) An individual who is not certified must have completed 12 semester hours emphasizing instructional areas for early childhood education.

(B) An individual who is certified must hold an elementary, special education, or vocational home economics certificate (degree required).

(3) Foreign language in the elementary grades.

(A) An individual must have current secondary certification with a teaching field in the language to be taught.

(B) An individual must have completed six semester hours of elementary education before the assignment is continued.

(C) Continued assignment must be documented on the individual's teacher service record.

(D) Requirements specified in §230.506 of this subchapter (relating to Renewal Requirements) do not apply to this assignment.

(c) Assignments to secondary grades (regular students).

(1) An emergency permit may be activated for an individual not certified at the secondary level provided the individual has completed:

(A) 24 semester hours in the subject to be taught; or

(B) 24 semester hours toward a composite teaching field appropriate for the assignment, including at least six semester hours in the subject to be taught.

(2) A temporary classroom assignment permit (TCAP) may be activated for a teacher certified at the secondary level assigned to a subject area not covered by the certificate. The district is not required to file the TCAP with the State Board for Educator Certification (SBEC) or appropriate education service center (ESC). The TCAP must be maintained in the district personnel records.

(A) An individual certified at the secondary level who is assigned to teach two or more class periods in an area not covered by the certificate must have completed 12 semester hours, including six semester hours in the specific subject area to be taught toward a teaching field appropriate for the assignment.

(B) To remain in the assignment, the teacher must comply with permit renewal requirements as specified in §230.506 of this subchapter (relating to Renewal Requirements).

(3) A district is not required to activate a TCAP to assign a teacher certified at the secondary level to teach one class period in a subject area for which the teacher has completed six semester hours in the specific subject area to be taught.

(d) Computer literacy in Grades 7 and 8.

(1) If an individual is not certified, he or she must have completed 24 semester hours in computer science.

(2) If an individual is currently certified based on a bachelor's degree, he or she must:

(A) have completed three semester hours directly related to information processing technologies; or

(B) have achieved computing competency by having completed any combination of vendor- provided training, ESC workshops, or higher education course work.

(e) Assignments to all grade levels (regular students).

(1) An individual must have completed 24 semester hours in the subject area, including six semester hours directly related to elementary grades and six semester hours directly related to secondary grades.

(2) Assignments in this category are limited to the areas of art, music, physical education, and speech communication-theater arts.

(f) Assignments to vocational programs.

(1) Agricultural science and technology assignments. The following provisions apply to assignments to agricultural vocational education for the handicapped (VEH), agricultural preemployment laboratory (PELE), and agricultural cooperative training (CO-OP).

(A) An individual must be currently certified in agricultural science.

(B) No previous work experience is required.

(C) One permit may be authorized to allow the teacher to attend a summer workshop or to complete six semester hours of upper-level specified technical agriculture courses in the area of specialization approved by the SBEC.

(2) Health science technology assignments. An individual must:

(A) hold one of the following:

(i) a bachelor's degree, preferably in allied health, from an accredited institution; or

(ii) an associate's degree in allied health from an accredited institution;

(B) be currently licensed, certified, or registered (requiring two years of formal education) by a state-authorized or nationally recognized accrediting agency as a professional practitioner in one or more health occupations for which instruction is offered; and

(C) have an approved statement of qualifications verifying two years of full-time employment in a licensed hospital or other health services agency beyond that required to become registered or certified.

(3) Home economics assignments.

(A) Home economics.

(i) An individual must hold a bachelor's degree in home economics from an accredited institution.

(ii) No previous work experience is required.

(B) Occupational home economics. An individual must satisfy one of the following requirements.

(i) An individual must:

(I) be certified in home economics; and

(II) have completed six semester hours of home economics education, emphasizing an all industry approach, designed to build instructional competencies in occupational home economics; or

(ii) an individual must:

(I) be certified in home economics with eligibility to teach specialized areas through CO-OP, PELE, coordinated vocational-academic education (CVAE), or VEH instructional settings; and

(II) have completed three semester hours of home economics education, emphasizing an all industry approach, designed to build instructional competencies in occupational home economics.

(4) Marketing education assignments. An individual must:

(A) hold a bachelor's degree from an accredited institution; and

(B) have an approved statement of qualifications verifying two years of full-time wage- earning experience in marketing occupations for which training is offered at the secondary level.

(5) Occupational orientation assignments. An individual must:

(A) hold a bachelor's degree from an accredited institution; and

(B) have an approved statement of qualifications verifying two years of full-time wage- earning experience in occupations other than teaching for which occupational education may be taught.

(6) Office education assignments (for any instructional arrangement). An individual must:

(A) hold a bachelor's degree in business/business education or have completed the equivalent of a minor in the course area to be taught; and

(B) have one of the following:

(i) an approved statement of qualifications verifying two years of full-time wage- earning experience in office occupations; or

(ii) verification of approval to complete a business internship approved by the certification officer of a college approved to prepare teachers for vocational office education.

(7) Trades and industry assignments.

(A) Cooperative training. An individual must:

(i) hold a bachelor's degree from an accredited institution; and

(ii) have an approved statement of qualifications verifying three years of full-time wage-earning experience in one or more approved occupations for which instruction is offered. The individual must be continuously employed for one of the three years in a single occupation or trade area.

(B) Preemployment laboratory.

(i) Option I. An individual must:

(I) hold a bachelor's degree from an accredited institution; and

(II) have an approved statement of qualifications verifying three years of full-time wage-earning experience in the occupation or skilled trade to be taught, two years of which must be in the predominant subject area.

(ii) Option II. An individual must:

(I) hold a high school diploma or the equivalent; and

(II) have an approved statement of qualifications verifying five years of full-time wage-earning experience in the occupation or skilled trade to be taught, three years of which must be in the predominant subject area.

(iii) Additional requirements. Cosmetology teachers approved under Options I or II must:

(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and

(II) be currently licensed as a cosmetology instructor by the Texas Cosmetology Commission.

(g) Assignments for special populations.

(1) Students with limited English proficiency (LEP).

(A) Bilingual education.

(i) An individual who holds a bachelor's degree from an accredited institution and is certified at the appropriate level must:

(I) have completed six semester hours in an approved bilingual education program;

(II) have completed six semester hours in the language of the target population; or

(III) have demonstrated proficiency in oral communication skills in the language of the target population by achieving a score of "intermediate mid" or higher on the Texas Oral Proficiency Test (TOPT).

(ii) An individual who holds a bachelor's degree from an accredited institution but is not certified must:

(I) meet the requirements for the level of assignment;

(II) be currently enrolled in an approved college program for bilingual education; and

(III) have satisfied one of the following requirements:

(-a-) have completed 12 semester hours in the language of the target population, bilingual education, or a combination of the two subject areas; or

(-b-) have demonstrated proficiency in oral communication skills in the language of the target population by achieving a score of "intermediate mid" or higher on the TOPT.

(B) English as a second language (ESL). An individual must:

(i) be currently certified for the grade level based on a bachelor's degree; and

(ii) have satisfied one of the following requirements:

(I) have completed six semester hours in an approved ESL program; or

(II) have one year of classroom teaching experience.

(2) Students with special learning needs.

(A) Hearing impaired. An individual must:

(i) hold a bachelor's degree from an accredited institution;

(ii) have completed six semester hours directly related to teaching the hearing impaired;

(iii) have demonstrated competence communicating with students who are deaf; and

(iv) have verified that the employing district, cooperative, or ESC has one or more fully certified teachers for the hearing impaired serving in this instructional program.

(B) Visually handicapped. An individual must:

(i) be currently certified in elementary, secondary, or special education;

(ii) have satisfied one of the following requirements:

(I) have completed six semester hours directly related to teaching the visually handicapped; or

(II) have one year of classroom teaching experience;

(iii) have demonstrated competency in literary braille and/or other special braille notations; and

(iv) have verified that the employing district, cooperative, or ESC has one or more fully certified teachers for the visually handicapped serving in this instructional program.

(C) Homebound or hospitalized. An individual must:

(i) be currently certified based on a bachelor's degree; and

(ii) have one year of acceptable teaching experience.

(D) Other special learning needs (resource room/categorically defined).

(i) An individual who holds a bachelor's degree from an accredited institution and is certified at the appropriate level must:

(I) have completed six semester hours directly related to teaching children with special learning needs; or

(II) have one year of classroom teaching experience.

(ii) An individual who holds a bachelor's degree from an accredited institution, but is not certified must:

(I) for elementary assignments, meet requirements for the level of assignment as stated in subsection (b) of this section and have completed 18 semester hours directly related to teaching children with special learning needs; or

(II) for secondary assignments, have completed 24 semester hours directly related to teaching children with special learning needs.

(h) Assignments for other instructional and support personnel.

(1) Counselors.

(A) Regular programs. An individual must:

(i) be currently certified at the level of assignment based on a bachelor's degree;

(ii) have 24 semester hours of graduate-level credit, including 12 semester hours in guidance and counseling; and

(iii) have one year of classroom teaching experience.

(B) Special education programs. An individual must:

(i) be currently certified at the level of assignment based on a bachelor's degree;

(ii) have 24 semester hours of graduate-level credit, including 12 semester hours in guidance and counseling and three semester hours in special education; and

(iii) have one year of classroom teaching experience.

(C) Vocational programs. An individual must:

(i) be currently certified based on a bachelor's degree;

(ii) have 12 semester hours of graduate-level credit in guidance and counseling; and

(iii) have satisfied one of the following requirements:

(I) have two years of acceptable teaching experience in an approved vocational program that prepares students for gainful employment; or

(II) have a combination of three years of experience that may include teaching experience but must include at least one year of experience in an occupation or trade area for which vocational education is offered. To establish acceptability of work experience other than teaching, a statement of qualifications must be

approved by the certification officer of an institution approved to prepare vocational counselors.

(2) Educational diagnosticians. An individual must:

(A) be currently certified based on a bachelor's degree;

(B) have 30 semester hours of graduate-level credit in the field of education or a related field, including six semester hours in tests and measurements, at least three of which emphasized individualized testing;

(C) have completed six semester hours directly related to teaching individuals with special learning needs; and

(D) have three years of acceptable teaching experience.

(3) Learning resources personnel. An individual must:

(A) be currently certified based on a bachelor's degree;

(B) have completed six semester hours directly related to the basic competencies required of learning resources personnel; and

(C) have one year of acceptable teaching experience.

(4) Reserve Officers' Training Corps (ROTC) instructors.

(A) An individual must verify that he or she has satisfied the requirements and been approved to serve by the ROTC.

(B) Requirements specified in §230.506 of this subchapter (relating to Renewal Requirements) do not apply to this assignment.

(C) Continued assignment must be documented on the individual's teacher service record.

(5) Supervisors.

(A) Regular programs. An individual must:

(i) be currently certified based on a bachelor's degree;

(ii) have 24 semester hours of graduate-level credit, including six semester hours of educational leadership and supervision; and

(iii) have three years of classroom teaching experience.

(B) Special education programs. An individual must:

(i) be currently certified based on a bachelor's degree;

(ii) have satisfied one of the following requirements:

(I) be currently certified in a special education area and have completed six semester hours in educational leadership or supervision; or

(II) be currently certified in supervision or administration and have completed six semester hours in special education, including a survey of individual exceptionalities;

(iii) have 24 semester hours of graduate-level credit in education or a related field; and

(iv) have three years of classroom teaching experience, including at least one year in a special education setting.

(C) Vocational programs. An individual must:

(i) hold a bachelor's degree and be currently certified, consistent with the supervisory assignment, for the grade level or programs; and

(ii) have satisfied one or a combination of the following requirements:

(I) have three years of teaching experience in an approved vocational education program adopted by the State Board of Education under the Texas Education Code (TEC), §28.002(b); or

(II) have three years of public school experience as a certified vocational counselor. Permit applicants for vocational supervisor assignments are not required to submit a statement of qualifications.

(6) Visiting teachers.

(A) Regular programs. An individual must:

(i) be currently certified based on a bachelor's degree;

(ii) have 15 semester hours of graduate-level credit in the social or behavioral sciences, including six semester hours of specific preparation in studies of the emotional and cultural development of individuals; and

(iii) have satisfied one or a combination of the following requirements:

(I) have three years of acceptable teaching experience; or

(II) have three years of experience in an approved social welfare agency.

(B) Special education programs. An individual must:

(i) be currently certified based on a bachelor's degree;

(ii) have 30 semester hours of graduate-level credit in social or behavioral sciences, including specific preparation to serve individuals with special learning needs; and

(iii) have three years of acceptable teaching experience.

*§230.505. Procedures for Activation of Initial Emergency Permits.*

(a) For all assignments (except vocational assignments based on skill and experience). The employing superintendent or authorized representative must verify the individual's eligibility for the permit as described in §230.503 (relating to General Eligibility Requirements for Emergency Permits) and §230.504 (relating to Specific Requirements for Initial Emergency Permits) of this subchapter and submit the following items to the appropriate education service center (ESC) within 60 days of assignment:

(1) an emergency permit application completed prior to the effective date of the assignment;

(2) one of the following:

(A) a college deficiency plan for completion of certificate requirements verifying that the individual meets the grade point average required for admission to the teacher education program; or

(B) for an individual who holds a bachelor's degree from an accredited institution, is certified, and is placed in an assignment requiring a classroom teaching certificate or endorsement, verification of registration for either the October or February administration of the appropriate content specialization portion of the Examination for the Certification of Educators in Texas (ExCET); and

(3) the appropriate fee (payable by the school district).

(b) For vocational assignments based on skill and experience. The employing superintendent or authorized representative must verify the individual's eligibility for the permit as described in §230.503 and §230.504 of this subchapter and submit the following items to the appropriate ESC within 60 days of assignment:

(1) an emergency permit application completed prior to the effective date of the assignment;

(2) a copy of the individual's statement of qualifications, approved by the employing superintendent or certification officer of an institution approved to prepare vocational teachers, verifying appropriate work experience in the occupation or trade area to be taught. For the purpose of approving work experience, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40, but at least 20, hours per week, shall be calculated at a 50% rate in determining years of full-time equivalent experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time equivalent experience;

(3) a college deficiency plan indicating course work to be completed for the vocational certificate appropriate for the assignment; and

(4) the appropriate fee (payable by the school district).

*§230.506. Renewal Requirements.*

(a) General provisions.

(1) The employing superintendent or authorized representative of a public school district may renew an emergency permit for the same assignment in the same school district for which the initial permit was activated.

(2) No individual may continue in the same assignment for more than three years of service on the basis of an emergency permit, except as provided in paragraph (3) of this subsection.

(3) The total of semester hours required to obtain certification appropriate for the assignment shall determine the number of permit renewals for which the individual may be eligible. The following schedule shall determine eligibility for permit renewal.

(A) For one through six semester hours plus appropriate examination requirements, an individual is not eligible for renewal.

(B) For 7-12 semester hours plus appropriate examination requirements, an individual is eligible for one renewal.

(C) For more than 12 semester hours plus appropriate examination requirements, an individual is eligible for two renewals.



(4) Permits used fewer than 85 days may be renewed for one additional year of service.

(b) Renewal procedures.

(1) Before an emergency permit for a noncertified individual is renewed for the first time, the superintendent or authorized representative must verify that:

(A) a noncertified teacher, except one serving in a vocational assignment requiring skill and experience in the areas taught, has passed a competency examination of basic skills approved by the State Board for Educator Certification (SBEC) for admission to a teacher education program; and

(B) a noncertified teacher serving in a vocational assignment requiring skill and experience in the areas taught has passed the Texas Examination of Current Administrators and Teachers (TECAT) or the reading and writing portions of the competency examination of basic skills approved by the SBEC.

(2) No permit renewal will be authorized for a teacher who does not successfully complete the appropriate examination requirements specified in paragraph (1) of this subsection.

(3) The superintendent or authorized representative may renew an emergency permit provided the following requirements and procedures are met.

(A) The permit must be renewed for the same assignment in the same school district.

(B) Official transcripts verifying completion of a minimum of six semester hours toward the appropriate target certificate must be placed in the individual's personnel file.

(C) The appropriate renewal section of the original permit application must be completed prior to the beginning date of duties for the current school year.

(4) Requests for emergency permit renewal must be submitted to the appropriate education service center (ESC) for authorization when:

(A) an individual has failed to demonstrate progress toward correcting a deficiency by completing the appropriate renewal requirements specified in subsection (a) of this section;

(B) the renewal is for a change of assignment or school district; or

(C) the renewal is for nonconsecutive years.

(5) The following materials must be submitted when requesting authorization for permit renewal from the appropriate ESC:

(A) an emergency permit application, indicating the appropriate renewal, completed before the continued assignment;

(B) official transcripts of all course work completed since authorization of the initial permit; and

(C) the appropriate fee (payable by the school district).

#### *§230.507. Nonrenewable Permits.*

(a) The superintendent of a public school district may activate a nonrenewable permit for an individual who has not completed the appropriate examination requirements specified in §230.5 of this chapter (relating to Educator Assessment).

(b) A nonrenewable permit may be activated for an individual in one or more of the following categories:

(1) an individual who has completed all course and degree requirements specified in this chapter except for successful completion of all appropriate examination requirements. Nonrenewable permits activated for individuals in this category expire 12 months from the date of activation;

(2) an individual who holds a Texas teacher certificate with an effective date before February 1, 1986, but has not revalidated the certificate for employment purposes by passing an examination specified in this chapter. The individual must not have been employed in a Texas public school during the 1985-1986 school year or since. A nonrenewable permit activated for an individual in this category expires six months from the date of activation or at the end of the school year, whichever is less; or

(3) an individual who has served on a temporary certificate under Subchapter O of this chapter (relating to Texas Certificates Based on Certification and College Credentials from Other States) and passed the appropriate content specialization portions of the Examination for the Certification of Educators in Texas (ExCET) but did not pass the professional development portion of the examination while the temporary certificate was valid. A nonrenewable permit activated for an individual in this category expires 12 months from the date the individual first attempted the professional development portion of the ExCET.

(c) A nonrenewable permit may not be activated for an individual in the same assignment area for which another permit had previously been authorized.

(d) The employing superintendent or authorized representative must verify that an individual is eligible for the permit under this section and submit the following items to the appropriate ESC within 60 days of assignment:

(1) an application for a nonrenewable permit completed before the effective date of the assignment; and

(2) the appropriate fee (payable by the school district).

#### *§230.509. Policy.*

An emergency permit may be granted to a foreign exchange teacher only under the conditions specified in this chapter.

#### *§230.510. Exchange Teachers.*

(a) A foreign exchange teacher may be granted an emergency permit valid for one school year when requested by a public school district that is participating in an officially recognized foreign exchange teacher program.

(b) The original permit is activated by submitting to the State Board for Educator Certification a completed application; the designated fee; and appropriate documentation showing earned degrees and years of experience in public schools, institutions of higher learning, or other creditable institutions.

(c) If a district wishes to continue employing a foreign exchange teacher after the initial contract year, the teacher must first pass the appropriate Examination for the Certification of Educators in Texas (ExCET) and the teacher's performance on the examination must be recorded in his or her personnel file. A record of the individual's continuation in the assignment will appear on the teacher service record.

*§230.511. Teachers for Bilingual Education Programs.*

(a) A foreign exchange teacher who will be employed specifically in bilingual education programs may be granted an emergency teaching permit valid for one school year when reciprocity is officially recognized as part of a foreign teacher exchange program. The reciprocity shall not be restricted to an exchange between schools, but to an exchange between a foreign country and Texas. Specific Texas schools that employ foreign exchange teachers for bilingual education shall not be required to reciprocate.

(b) Before exchanging teachers, an agreement is made between the State Board for Educator Certification (SBEC) and a ministry of education in a foreign country, or as in the case of Mexico, with a secretary of education from one of its states. The agreement is that the exchange of teachers will be reciprocal at the request of each agency, and that no requirements be made between the two local schools, but between a foreign country or a state in the foreign country and Texas. Texas is not required to send teachers to the foreign country, but may do so if the opportunities arise.

(c) In the spring of each year, the chief school administrators of all school districts are informed of the availability of foreign exchange teachers for employment in bilingual programs. After the school districts have requested teachers, the SBEC interviews and selects the appropriate teachers and helps prepare visas and working papers in cooperation with the United States Immigration and Naturalization Service.

(d) A foreign exchange teacher usually arrives in Austin before the start of the school year to meet with his or her school district administrator and learn about the program. SBEC staff members regularly visit participating schools and serve as consultants to the programs.

(e) The SBEC evaluates all foreign exchange programs. Each foreign exchange teacher and local administrator must submit a report of the year's activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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**Subchapter R. Record of Certificates**

**19 TAC §230.531, §230.532**

These sections are proposed under Texas Education Code (TEC), §21.041(b)(8) which requires the State Board for Educator Certification to propose rules that provide for an educator code of ethics.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.531. Presentation of Certificate or Permit.*

(a) A person who desires to be employed in a public school district in Texas must present his or her certificate for recording or filing to the superintendent of the employing school district. The certificate must be presented for record before a contract with the board of trustees of the district is binding.

(b) Any staff member required to hold a certificate who does not hold a valid certificate or emergency permit shall not be paid for teaching or work done before the effective date of a valid certificate or permit.

*§230.532. Required Parent Notification of Noncertified Teachers.*

(a) School districts that assign a person as teacher of record to a classroom or subject area for which the her is not eligible for assignment as specified in Subchapter U of this chapter (relating to Assignment of Public School Personnel) shall provide written notification to the parents of students taught by that teacher unless:

(1) the teacher qualifies for and the district activates or renews an appropriate permit to validate the assignment;

(2) the teacher has completed 24 semester hours in the subject taught; or

(3) the teacher is serving an internship under an approved professional educator preparation program.

(b) Parents must be notified in writing when students are required to attend classes in an instructional arrangement for which the district has not employed a person who is eligible for the assignment as specified in subsection (a) of this section. Except for circumstances specified in subsection (c) of this section, the notice must be sent no later than 30 school days after the start of school or any time during the school year when staffing changes result in students being placed in such classes.

(c) When a certified teacher is absent in excess of 30 consecutive school days, requiring a district to assign a noncertified person or persons to continue the instructional program of that teacher's students, the district must notify the parents in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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**Subchapter S. Paraprofessional Certification**

**19 TAC §§230.551-230.560**

These sections are proposed under Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.551. Policy.*

Each person employed in Texas public schools as an educational aide or educational secretary must be certified according to the certification requirements or standards for each position established by the State Board for Educator Certification.

*§230.552. Procedures in General.*

(a) School district administrators have the authority and responsibility to determine the number of paraprofessionals and level of job performance desired for the operation of the school district's program. They are also responsible for preparing accurate job descriptions for each assignment, classifying each assignment, and filling these assignments with qualified personnel according to this subchapter.

(b) All paraprofessional certificates shall be permanent.

(c) An appropriate certificate shall be issued to a qualified individual who is recommended by an employing superintendent or other authorized representative of the district. The school district shall submit the following materials to the SBEC:

(1) an accurately completed application and recommendation for an educational aide or educational secretary; and

(2) the designated fee.

(d) An individual with paraprofessional experience in other states must have that experience verified on a teacher service record when he or she is employed in a Texas school district.

*§230.553. Certification Requirements for Educational Aide I.*

An applicant for an educational aide I certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have experience working with students or parents as approved by the employing superintendent. Experience may be work in church related schools, day camps, youth groups, private schools, licensed day-care centers, or similar experience; and

(3) be recommended by the employing superintendent.

*§230.554. Certification Requirements for Educational Aide II.*

An applicant for an educational aide II certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have two years of experience as an educational aide I; or

(B) have a minimum of 15 semester hours of college credit with some emphasis on child growth and development or related subject areas; or

(C) have demonstrated proficiency in a specialized skill area as determined by the local school district;

(3) have experience working with students or parents as approved by the employing superintendent; and

(4) be recommended by the employing superintendent.

*§230.555. Certification Requirements for Educational Aide III.*

An applicant for an educational aide III certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have three years of experience as either an educational aide I or II; or

(B) have 30 semester hours of college credit with some emphasis on child growth and development or related subject areas;

(3) have experience working with students or parents as approved by the employing superintendent; and

(4) be recommended by the employing superintendent.

*§230.556. Certification Requirements for Educational Secretary I.*

An applicant for an educational secretary I certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have appropriate clerical or secretarial experience or background as approved by the employing superintendent; and

(3) be recommended by the employing superintendent.

*§230.557. Certification Requirements for Educational Secretary II.*

An applicant for an educational secretary II certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have two years of experience as an educational secretary I; or

(B) have 15 semester hours of college credit with some business orientation or equivalent business school background; or

(C) have three years of general clerical/secretarial experience;

(3) have appropriate clerical or secretarial experience or background as approved by the employing superintendent; and

(4) be recommended by the employing superintendent.

*§230.558. Certification Requirements for Educational Secretary III.*

An applicant for an educational secretary III certificate shall:

(1) be a high school graduate or hold a general education diploma (GED) certificate;

(2) have satisfied one of the following requirements:

(A) have 30 semester hours of college credit with some business orientation or equivalent business school training;

(B) have successfully demonstrated seven areas of competence specified in the professional standards program of the National Association of Education Office Personnel, including typing, transcription, filing procedures, office records, management, and business writing; or

(C) have five years of general clerical/secretarial experience;

(3) have satisfied one of the following requirements:

(A) have three years of general clerical/secretarial experience; or

(B) three years of experience as an educational secretary I or II; and

(4) be recommended by the employing superintendent.

*§230.559. Assignments in Specialized Areas.*

Each person employed as a paraprofessional shall be required to hold a paraprofessional certificate. A paraprofessional assigned to a specialized area, such as vocational education, special education, and title programs, shall meet the eligibility requirements assigned to that area; however, no certification beyond a paraprofessional certificate will be required for assignment in a specialized area.

*§230.560. Role Descriptions.*

School districts shall use the following guidelines to assign educational aides and secretaries.

(1) An educational aide I: is assigned and performs routine tasks under the direction and supervision of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher with clerical operations; helps the teacher supervise students in routine movement from one recreational activity to another; helps supervise the playground, bus, and lunchroom; helps the teacher prepare and use instructional media; duplicates instructional materials for teachers; performs classroom clerical operations under the supervision of a certified teacher; or performs equivalent activities determined by the local school district.

(2) An educational aide II: is assigned and performs tasks under the general supervision of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher prepare and use instructional materials; conducts drills and exercises as directed by the teacher; helps administer and score objective measurement instruments; helps the teacher work with individual students and groups; duplicates materials; records grades and attendance; prepares instructional aids, including displays and mockups; assists with play area activities; helps operate and use educational media; assists with testing routines; works with individual students in drills and exercises; conducts group drills and exercises; assists students with programmed or precise units of instruction; or performs equivalent activities determined by the local school district.

(3) An educational aide III: performs and assumes responsibility for tasks under the general guidance of a certified teacher or teaching team; releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating; helps the teacher implement methodology and use instructional media to yield an educational environment for all students; assists the teacher with instructional activities; works with individuals or groups of students in a variety of educational experiences; relieves the teacher of selected exercises and instructional drills with students; or performs equivalent activities determined by the local school district.

(4) An educational secretary I: performs assigned routine clerical tasks under the direction and supervision of professional staff; performs general office tasks such as routine filing; as directed, maintains records, such as attendance, student transcripts, reports, stencils, letters, and documents; operates office equipment; issues consumable teaching and office supplies; maintains supply inventory;

performs other duties as assigned at the file clerk level; or performs equivalent activities determined by the local school district.

(5) An educational secretary II: performs assigned clerical tasks under the general supervision of professional personnel; performs tasks such as the functions of an educational secretary I; takes dictation in shorthand or other forms of speedwriting; operates electronic transcription equipment; schedules appointments, conferences, and interviews; assumes some limited supervisory functions; performs other duties assigned at this level, such as bookkeeping operations; or performs equivalent activities determined by the local school district.

(6) An educational secretary III: under the general guidance of professional personnel, performs and assumes responsibility for clerical/secretarial tasks, including preparation of correspondence, reports, requisitions, and administration and district calendars; makes routine decisions according to established priorities and policies; accepts responsibility for making office reports and supervising the office operations; is capable of fulfilling the functions of an educational secretary I and II; performs other duties assigned at the level of an educational secretary III, which may include establishing and maintaining fiscal accounts, maintaining payroll, and attending to insurance matters; operates technical business machines; or performs equivalent activities determined by the local school district.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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For further information, please call: (512) 469-3004



## Subchapter U. Assignment of Public School Personnel

### 19 TAC §230.601

These sections are proposed under Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be offered.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.601. Assignment of Public School Personnel.*

(a) An individual who holds a valid certificate based on successful completion of the appropriate examination requirements specified in this Chapter, met the assignment requirements in effect for a subject, and was assigned to teach that subject before September 1, 1989, shall remain eligible to teach the subject. An individual who met the assignment requirements and was assigned to teach reading improvement, reading, or advanced reading before September 1, 1990, shall remain eligible to teach that subject.

(b) The preparation of teachers assigned to Grades 6-8, which are organized on a self-contained basis, shall comply with the

standards for elementary teachers. A self-contained class shall be defined as a class that is taught by one teacher for at least 50% of the school day.

(c) An elementary certificate may be appropriate for teaching high school students if the level of instruction is comparable to that in elementary grades. When such an assignment is made, course outlines must be maintained in the school district files.

(d) All professional personnel employed in federally funded programs and innovative programs must have the qualifications and meet the assignment requirements specified in subsection (f) of this section.

(e) The assignment requirements in this subchapter apply to substitute teachers. If a school district must employ substitute teachers who are not certified, a list of the substitute teachers shall be retained in the school district files.

(f) A public school employee must have the appropriate credentials for his or her current assignment specified in the charts in this section, unless the appropriate permit has been issued under Subchapter Q of this chapter.

Figure: 19 TAC §230.601(f)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

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Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3004



## Subchapter V. Continuing Education

### 19 TAC §230.610, §230.611

These sections are proposed under Texas Education Code (TEC), §21.044 and 21.054 which require the State Board for Educator Certification to propose rules that require an induction year program and establish continuing education requirements for educators.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.610. Induction Program for Beginning Teachers.*

(a) General provisions. Beginning teachers who do not have prior teaching experience shall be assigned a mentor teacher.

(b) Induction training for beginning teachers. Beginning teachers shall participate in teacher orientation, which may include specialized induction year program activities.

*§230.611. Standards for Management and Leadership Development for Administrators.*

Continuing inservice. After fulfilling the initial training requirement for instructional leadership and the state-recommended teacher appraisal system, each school administrator shall participate annually in continuing education in management and leadership development as defined in the Texas Education Code, §13.353(a) and (c) as it

existed on January 1, 1995, including training in site-based decision making established under the Texas Education Code (TEC), Chapter 11, Subchapter F.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3004



## Subchapter Z. General Provisions Relating to the Transition of Authority to the State Board for Educator Certification

### 19 TAC §230.901

This section is proposed under Section 63(h), Senate Bill 1, 74th Texas Legislature (1995), which provides for the creation of the State Board for Educator Certification and requires that all authority under the Texas Education Code (TEC), Chapter 21, Subchapter B, be assumed by the Board no later than November 1, 1997.

The rules implement Texas Education Code, Chapter 21, Subchapter B, §21.041(b)(1).

*§230.901. General Provisions.*

(a) Rules adopted by the State Board for Educator Certification (SBEC) in this chapter shall be construed in accordance with this subchapter pending final adoption of rules to assume all duties transferred from the State Board of Education, Texas Education Agency (TEA or commissioner of education).

(b) The rules subject to this subchapter are to be construed to transfer all authority to the SBEC as to the definition, requirements, and administrative decisions to issue or deny a certificate.

(c) The rules subject to this subchapter are to be construed to retain with the commissioner all authority related to administrative hearings involving educator certification and professional practices and standards of conduct under TAC 19, Chapter 137, Subchapter T, pending the adoption of rules by the SBEC to assume those administrative hearings. Until such adoption, any such hearings shall be conducted by the commissioner in accordance with procedural rules adopted for hearings before the commissioner or TEA. The commissioner or his designee shall enter a final order, which may be appealed in accordance with the Texas Education Code (TEC), §7.057.

(d) Any certificate or program approval issued by the State Board of Education prior to the effective date of this chapter shall be valid until modified, altered, or canceled by action of the SBEC or until the certificate expires on its own terms.

(e) This subchapter expires November 1, 1997.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 23, 1996.

TRD-9613904

Mark Littleton

Executive Director

State Board for Educator Certification

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For further information, please call: (512) 469-3004

## TITLE 22. EXAMINING BOARDS

### Part XV. Texas State Board of Pharmacy

#### Chapter 283. Licensing Requirements for Pharmacists

##### 22 TAC §§283.2–283.4, 283.7–283.9, 283.11

The Texas State Board of Pharmacy proposes an amendment to §283.2-283.4, 283.7-283.9, and 283.11, concerning Definitions, Educational and Age Requirements, Internship Requirements, Examination Requirements, Reciprocity Requirements, Fee Requirements for Licensure by Examination and Reciprocity, Examination Retake Requirements.

The amendments are being proposed to: (1) require the same application deadline schedule for reciprocity candidates as exists for examination candidates; (2) correct the name of the Pharmacy Licensing Exam from National Association of Boards of Pharmacy Licensing Examination (NABPLEX) to the North American Pharmacy Licensing Examination (NAPLEX); and (3) clarify that a graduate of a foreign college of pharmacy is required to obtain full certification from Foreign Pharmacy Graduate Equivalency Commission before the candidate is eligible for licensing.

Fred S. Brinkley, Jr., R.Ph., M.B.A., Executive Director/Secretary has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brinkley also has determined that for each year of the first five-year period the sections will be in effect the public benefit anticipated as a result of enforcing the sections will be the establishment of a system for licensing of qualified individuals as pharmacists.

There will be no effect on small businesses and there is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 333 Guadalupe, Box 21, Suite 3-600, Austin, Texas, 78701-3942.

The amendments are proposed under the Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, §16(a) which gives the Board the authority to adopt rules for the proper administration

and enforcement of the Act; §21 and §22, which dictate the qualifications for licensing by examination and by reciprocity.

Texas Civil Statutes, Article 4542a-1 is affected by these proposed amendments.

##### §283.2. Definitions.

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

Extended-intern- A pharmacist-intern, registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the **NAPLEX** [NABPLEX] and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) - (E) (No change.)

**NAPLEX** [NABPLEX]- The **North American Pharmacy Licensing Examination, or its predecessor**, National Association of Boards of Pharmacy Licensing Examination.

[TOEFL - The Test of English as a Foreign Language, as given by American College Testing (ACT) and certified by the FPGEC.]

##### §283.3. Educational and Age Requirements.

An applicant for licensure shall be of good moral character, provide satisfactory evidence that the age of 18 years has been obtained and shall meet one of the following requirements:

(1) have graduated and received a professional degree from a college of pharmacy the professional degree program of which has been accredited by ACPE and meets the requirements of the board; or

(2) have graduated from a foreign college of pharmacy and obtained full certification from the FPGEC.[ Such certification shall include:

[(A) passing the FPGEE with a score of at least 75; and

[(B) demonstrating proficiency in English by passing the TOEFL with a score of at least 550.]

##### §283.4. Internship Requirements.

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

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has made application to the board and met one of the following requirements:

(A) passed **NAPLEX** [NABPLEX] and the Texas pharmacy jurisprudence examination but lacks the required number of internship for licensure;

(B) - (E) (No change.)

(2)-(4) (No change.)

(e) (No change.)

##### §283.7. Examination Requirements.

Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the **NAPLEX** [NABPLEX]. The examination requirements shall be as follows:

(1) Prior to taking the required examination, the applicant shall meet the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements).

(2) All applicants shall pass **NAPLEX**, [NABPLEX] which includes, at a minimum, the following subject areas:

(A)-(E) (No change.)

(3) Effective October 1, 1979, the following requirements apply.

(A) To pass **NAPLEX** [NABPLEX], an applicant shall make the following grades:

(i) a minimum grade of 60 on chemistry, mathematics, pharmacy, and pharmacology test;

(ii) a minimum grade of 75 on the practice of pharmacy test; and

(iii) a minimum average grade of 75 on the **NAPLEX** [NABPLEX].

(B) Should the applicant fail to achieve a minimum grade of 60 in any of the tests set out in paragraph (2)(A)-(D) of this section or fail to achieve a minimum grade of 75 in the practice of pharmacy test or fail to achieve a minimum average grade of 75 in the **NAPLEX**, [NABPLEX] such applicant, in order to be licensed, is required to retake all tests until such time as the minimum average grades are achieved.

(4) Effective June 1, 1986, the following requirements apply.

(A) To pass the **NAPLEX**, [NABPLEX] an applicant shall make a minimum average grade of 75.

(B) Should the applicant fail to achieve a minimum average grade of 75 in the **NAPLEX**, [NABPLEX] such applicant, in order to be licensed, shall retake the **NAPLEX**, [NABPLEX] as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum average grade of 75 is achieved.

(5) To pass the Texas Pharmacy Jurisprudence Examination, an applicant shall make a minimum grade of 75. Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum average grade of 75 is achieved.

(6) If the applicant should fail both **NAPLEX** [NABPLEX] and the Texas Pharmacy Jurisprudence Examination, the examinations shall be retaken at the same administration as specified in §283.11 of this title (relating to Examination Retake Requirements).

(7) (No change.)

(8) Examination applications and fees specified in §283.9(a) of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity) shall be received in the board office no later than the following prescribed deadlines:

(A) for the initial examination or retake of **NAPLEX** [NABPLEX] and the Texas Pharmacy Jurisprudence Examination - six weeks prior to the examination date; and

(B) for retake of the Texas Pharmacy Jurisprudence Examination only - three weeks prior to the examination date.

(9) Each applicant for licensure by examination utilizing **NAPLEX** [NABPLEX] scores transferred from another state shall meet the following requirements for licensure in addition to the requirements set out in paragraphs (1) - (8) of this section.

(A) The applicant shall request NABP to transfer **NAPLEX** [NABPLEX] scores to the board. Such request shall be postmarked no later than seven days from the date of the **NAPLEX** [NABPLEX] test administration.

(B) The applicant shall pay the fee set out in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity).

*§283.8. Reciprocity Requirements.*

(a) (No change)

(b) The completed reciprocity applications and fees as specified in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity) shall be received in the board's office no later than **six** [three] weeks prior to the scheduled examination.

(c) A reciprocity applicant originally licensed after January 1, 1978, and who has graduated and received a professional degree from a college of pharmacy whose professional degree program has been approved by ACPE and approved by the board, shall show proof such applicant has:

(1) passed the **NAPLEX** [NABPLEX] or equivalent examination based on criteria no less stringent than the criteria in force in Texas; or

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

(d) A reciprocity applicant who is a foreign pharmacy graduate shall provide written documentation that such applicant has:

(1) **obtained full certification from the FPGEC; and** [passed the FPGEE with a score of 75;]

[(2) passed the TOEFL with a score of 550; and]

(2) [(3)] passed **NAPLEX** [NABPLEX] or equivalent examination based on criteria no less stringent than the criteria in force in Texas.

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

*§283.9. Fee Requirements for Licensure by Examination and Reciprocity.*

(a) The fees for licensure by examination and reciprocity are as follows:

(1) Examination fee - \$200 effective for the June 1988 examination and \$300 effective for the June 1995 examination (includes administration of **NAPLEX** [NABPLEX] and Texas Pharmacy Jurisprudence Examination); and

(2) Reciprocity fee - \$250, includes administration of the Texas Pharmacy Jurisprudence Examination.

(b) If an applicant fails an examination or is required to take an examination for reinstatement of a license, the fees for administration of the examination(s) are as follows:

(1) **NAPLEX** [NABPLEX] and Texas Pharmacy Jurisprudence or **NAPLEX** [NABPLEX] only - \$200, effective for

the June 1988 examination and \$300, effective for the June 1995 examination; and

(2) Texas Pharmacy Jurisprudence Examination - \$25, \$50 beginning with January 1996 examination and thereafter.

(c) (No change.)

(d) A person who takes **NAPLEX** [NABPLEX] and/or the Texas pharmacy jurisprudence examination will be notified of the results of the examination(s) within two weeks of receipt of the results of the examination(s) from the testing service. If both **NAPLEX** [NABPLEX] and the Texas pharmacy jurisprudence examination are taken, the applicant will not be notified until the results of both examinations have been received. Such notification will be made within two weeks after receipt of the results of both examinations.

(e) (No change.)

#### *§283.11. Examination Retake Requirements.*

(a) Licensing by examination. Should an applicant fail to achieve the minimum grade on the **NAPLEX** [NABPLEX] or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

(1) If the applicant fails to achieve the minimum grade on **NAPLEX** [NABPLEX] as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake **NAPLEX** [NABPLEX] two additional times for a total of three exam administrations. Prior to any subsequent retakes of **NAPLEX**, [NABPLEX] the applicant must:

(A) request in writing an analysis of the applicant's performance on the most recent **NAPLEX** [NABPLEX] and provide this analysis to the Examination Retake Committee;

(B) - (D) (No change.)

(2) (No change.)

(3) If the applicant fails to achieve the minimum grade on both **NAPLEX** [NABPLEX] and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations at the same administration until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613813

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director

Texas State Board of Pharmacy

Proposed date of adoption: November 6, 1996

For further information, please call: (512) 305-8027



## Chapter 291. Pharmacies

### Community Pharmacy (Class A)

#### 22 TAC §§291.31-291.34, 291.36

The Texas State Board of Pharmacy proposes amendments to §§291.31-291.34 and 291.36 concerning Definitions, Personnel, Operational Standards, Records, Class A Pharmacies Compounding Sterile Pharmaceuticals.

The amendments will redefine the definition of a new prescription to include any prescription transferred into a pharmacy and any drug a patient has not taken in the same strength and/or dosage form. The amendments will also specify that non-pharmacist personnel may not ask questions intended to limit a patient's access to a pharmacist. The amendments also specify procedures for transferring new prescriptions between pharmacies and allow pharmacist to delegate the affixing of a prescription label to a pharmacy technician or automated dispensing systems provided the pharmacist makes a final check of the prescription to verify the accuracy before delivery to the patients. The responsibility for the accuracy of the prescription remains with the pharmacist.

Fred S. Brinkley, Jr., R.Ph., M.B.A., Executive Director/Secretary has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Brinkley also has determined that for each year of the first five-year period the rules will be in effect the public benefit anticipated as a result of enforcing the rule will be the protection of the public health and welfare through the specifications of standards for the provision of information about prescription drugs to patients by pharmacists and the specifications of standards for the dispensing of prescriptions.

There will be no effect on small businesses and there is no anticipated economic costs to persons who are required to comply with the rules as proposed.

A public hearing on the proposed rules will be held at 9:00 a.m., Wednesday, November 6, 1996, at 333 Guadalupe Street, Suite 2-225, Austin, Texas 78701.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 333 Guadalupe, Box 21, Suite 3-600, Austin, Texas, 78701-3942.

The amendments are proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; 1); §17(b)(3) which gives the Board the authority to specify minimum standards for counseling of patients and maintenance of prescription drug records; and §17(b)(4) which gives the Board the authority to adopt rules regarding the transmission of prescription drug orders by electronic means.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

#### *§291.31. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Automated drug dispensing system-An automated device that measures, counts, [and/or] packages, **and/or labels** a specified quantity of dosage units for a designated drug product.



New prescription drug order—**A prescription drug order that:**

**(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;**

**(B) is transferred from another pharmacy; and/or**

**(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)** [A prescription drug order for a drug not previously self administered by the patient. A new prescription includes a discharge prescription drug order but not a furlough prescription drug order.]

§291.32. *Personnel.*

(a) (No change.)

(b) Pharmacists.

(1) (No change.)

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A)-(C) (No change.)

(D) [affixing the label to the prescription container and] performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E)-(I) (No change.)

(3) (No change.)

(c) Supportive personnel/pharmacy technician.

(1) (No change.)

(2) Duties.

(A)-(B) (No change.)

**(C) A pharmacist may not delegate the act of affixing a label to a prescription container unless the supportive person/pharmacy technician has completed the education and training requirements outlined in paragraph (1) and (4) of this subsection.**

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

(5) Training program. Supportive personnel training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) (No change.)

(B) instruction in the following areas and any additional areas appropriate to the duties of supportive personnel in the pharmacy:

(i)-(vii) (No change.)

(viii) Prescription drug order preparation:

(I)-(V) (No change.)

**(VI) Affixing the prescription label;**

**(VII) Affixing auxiliary labels, if indicated;**

**and**

**(VIII)** [VI] Preparing the finished product for inspection[, labeling,] and final check by pharmacists;

(ix)-(xii) (No change.)

(d) (No change.)

§291.33. *Operational Standards.*

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

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) (No change.)

(B) Such communication:

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

(iv) [may be reinforced with written information when deemed appropriate by the pharmacist.] Beginning September 1, 1993, the communication shall be reinforced with written information. The following is applicable concerning this written information.

(I)-(III) (No change.)

**(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.**

**(D)** [C] Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

**(E)** [(D)] In addition to the requirements of subparagraphs (A)-(D) [(C)] of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in clause (ii) of this subparagraph.

(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(iii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) [(E)] of this paragraph.

(iv) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the

Patient), or another source of such information, such as patient information leaflets.

(F) [(E)] In addition to the requirements of subparagraphs (A)- (D) [(C)] of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll -free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions"

(G) [(F)] The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2)-(4) (No change.)

(d) Equipment and supplies.

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

**(3) Automated dispensing or compounding devices(s). If automated dispensing or compounded device(s) are used, the pharmacy shall have a method to calibrate and verify the accuracy of the automated dispensing or compounding devices and document the calibration and verification on a routine basis.**

(e)-(i) (No change.)

§291.34. Records.

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

(d) Prescription drug order records maintained in a manual system.

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

(4) Transfer of prescription drug order information. For the purpose of refill **or initial** dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(A)-(E) (No change.)

(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) (No change.)

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing **or receipt**, if different from date of issuance;

(II) (No change.)

(III) number of valid refills remaining and the date of last refill, **if applicable**;

(IV)-(V) (No change.)

(5) (No change.)

(e) Prescription drug order records maintained in a data processing system.

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

(4) Transfer of prescription drug order information. For the purpose of refill **or initial** dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A)-(E) (No change.)

(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) (No change.)

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing **or receipt**, if different from date of issuance;

(II) (No change.)

(III) number of valid refills remaining and the date of last refill, **if applicable** ;

(IV)-(V) (No change.)

(G)-(J) (No change.)

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

(f)-(k) (No change.)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(6) (No Change.)

(7) Automated compounding or drug dispensing system – An automated device that compounds, measures, counts, [and/or] packages, **and/or labels** a specified quantity of dosage units for a designated drug product.

(8)-(33) (No change.)

(34) New prescription drug order - **A prescription drug order that:**

**(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;**

**(B) is transferred from another pharmacy; and/or**

**(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)** [A prescription drug order for a drug not previously self administered by the patient. A new prescription includes a discharge prescription drug order but not a furlough prescription drug order.]

(35)-(54) (No change.)

(c) Personnel.

(1) (No change.)

(2) Pharmacists.

(A) (No change.)

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

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

(v) [affixing the label to the prescription container and] performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(vi)-(ix) (No change.)

(3) Supportive personnel/pharmacy technicians.

(A) (No change.)

(B) Duties.

(i)-(ii) (No change.)

**(iii) A pharmacist may not delegate the act of affixing a label to a prescription container unless the supportive person/pharmacy technician has completed the education and training requirements outlined in subparagraph (A) and (D) of this subsection.**

(C)-(D) (No change.)

(E) Training program. Supportive personnel training shall be outlined in a training manual. Such training manual shall, at a minimum contain the following:

(i) (No change.)

(ii) instruction in the following areas and any additional areas appropriate to the duties of supportive personnel in the pharmacy:

(I)-(VII) (No change.)

(VIII) Prescription drug order preparation:

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

**(-f) Affixing the prescription label;**

**(-g) Affixing auxiliary labels, if indicated; and**

**(-h) [-f-] Preparing the finished product for inspection[, labeling,] and final check by pharmacists;**

(IX)-(XIII) (No change.)

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

(d) Operational standards.

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

(3) Prescription dispensing and delivery.

(A) Patient counseling and provision of drug information.

(i) (No change.)

(ii) Such communication:

(I)-(III) (No change.)

(IV) [may be reinforced with written information when deemed appropriate by the pharmacist.] Beginning September 1, 1993, the communication shall be reinforced with written information. The following is applicable concerning this written information.

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

**(iii) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.**

(iv) [(iii)] Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(v) [(iv)] In addition to the requirements of clauses (i)-(iv) [(iii)] of this subparagraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(I) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subclause (II) of this clause.

(II) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours, and provided a record of the delivery is maintained containing the following information:

(-a-) date of the delivery;

(-b-) unique identification number of the prescription drug order;

(-c-) patient's name;

(-d-) patient's phone number or the phone number of the person picking up the prescription; and

(-e-) signature of the person picking up the prescription.

(III) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in clause (vi) [(v)] of this subparagraph.

(IV) A Class A pharmacy compounding sterile pharmaceuticals that delivers prescriptions to patients or their agents on-site shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information, such as patient information leaflets.

(vi) [(v)] In addition to the requirements of clauses (i)-(iv) [(iii)] of this subparagraph, if a prescription drug order is

delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(I) The information specified in clause (i) of this subparagraph shall be delivered with the dispensed prescription in writing.

(II) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(III) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."

(IV) The pharmacist-in-charge shall assure that:  
(-a-) adequate storage or shipment containers and shipping processes are used to ensure drug stability and potency; and

(-b-) the pharmacy utilizes a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(vii) [(vi)] The provisions of this subparagraph do not apply to patients in facilities where drugs are administered to patients by a person authorized to do so by the laws of the state (i.e., nursing homes).

(B)-(C) (No change.)

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

(e) Records.

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

(3) Prescription drug order records maintained in a manual system.

(A)-(C) (No change.)

(D) Transfer of prescription drug order information. For the purpose of refill **or initial** dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i)-(v) (No change.)

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) (No change.)

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing **or receipt**, if different from date of issuance;

(-b-) (No change.)

(-c-) number of valid refills remaining and the date of last refill, **if applicable**;

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

(E) (No change.)

(4) Prescription drug order records maintained in a data processing system.

(A)-(C) (No change.)

(D) Transfer of prescription drug order information. For the purpose of refill **or initial** dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(i)-(v) (No change.)

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) (No change.)

(II) record on the transferred prescription drug order the following information:

(-a-) original date of issuance and date of dispensing **or receipt**, if different from date of issuance;

(-b-) (No change.)

(-c-) number of valid refills remaining and the date of last refill, **if applicable**;

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

(vii)-(x) (No change.)

(E)-(F) (No change.)

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

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on September 19, 1996.

TRD-9613822

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Proposed date of adoption: November 6, 1996

For further information, please call: (512) 305-8027



## Part XVII. State Board of Plumbing Examiners

### Chapter 361. Administration

#### Election of Board Officers

##### 22 TAC §361.29

The State Board of Plumbing Examiners proposes new §361.29. This section defines the process used for election of the Board officers, date of elections and the length of the terms.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that each year of the first five years the rule is in effect the public benefit will be a clearer understanding of the process used to elect Board officers. The rule will also set specific times for the election and terms of office. There will be no effect on small businesses. There is no economic cost to the persons having to comply with this new rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The new section is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-101, §5(a) (Vernon 1996).

*§361.29. Election of Board Officers.*

**Beginning with the July 1997 Board meeting, the Board shall formally elect a Chairman, Vice-Chairman and Secretary. Elections will be held every two years. The elected Board officers will take office beginning with the September Board meeting following the elections held at the July Board meeting. Each elected Board officer shall serve a two-year term.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613841

Ernest Pereyra, CPA

Chief Fiscal Officer

State Board of Plumbing Examiners

Earliest date of adoption: October 24, 1996

For further information, please call: (512) 458-2145



## Chapter 363. Examinations

### Qualifications

#### 22 TAC §363.1

The State Board of Plumbing Examiners proposes an amendment to §363.1. This section specifies the qualification necessary to become a licensed plumber. This amendment is being proposed to allow those individuals requesting to take the journeyman examination without a high school diploma or a GED if they had begun accumulating their work experience hours prior to September 1, 1993 and apply to take the Journeyman examination by December 31, 1997. This amendment is also being proposed to provide rules on the installation of graywater systems.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that each year of the first five years the rule is in effect the public benefit will be to provide individuals which had begun collecting work experience hours prior to September 1, 1993, the opportunity to take the journeyman examination and a clarification of the rules for the installation of gray water systems. These changes will provide

the public with a fair implementation of the high school diploma or GED requirement to take the journeyman examination and it will make it clear that construction of new graywater system or modification of existing graywater systems must be carried out in accordance with the rules of the Texas Natural Resource Conservation Commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The amendment is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-101, §§5(a) and 5B(a) (Vernon 1996).

*§363.1. Qualifications.*

(a) (No change.)

(b) Journeyman Plumber. Each applicant must:

(1) be a high school graduate, [or] hold a General Equivalency Diploma (GED) **or have begun accumulating work experience hours prior to September 1, 1993 and apply to take the Journeyman examination by December 31, 1997;** and

(2) have either of the following:

(A) registration as a registered plumbing apprentice and at least 8,000 hours of experience working at the trade or such work experience and technical training combined to equal 8,000 hours, as verified by former employers; or

(B) a journeyman license from another state that need not be current at the time of application if the expired license is renewable in the state that issued it.

(c)-(f) (No change.)

**(g) New construction of a graywater system or modification to an existing graywater system must be carried out in accordance with the rules of the Texas State Board of Plumbing Examiners and:**

**(1) the Uniform Plumbing Code and its appendixes in single family dwelling installations; or**

**(2) the National Standard Plumbing Code and its appendixes and the National Association of Plumbing-Heating-Cooling Contractors Assessment of On-Site Graywater and Combined Wastewater Treatment and Recycling Systems manual in single family dwelling or commercial installations.**

**(3) Unless exempted by Section 3 of the Plumbing License Law, new construction of a graywater system or modification to an existing graywater system must be performed under the supervision of a person licensed under the Plumbing License Law. When an on-site disposal field or system is utilized all work past the storage tank must be undertaken by a licensee who meets the certification requirements of the Texas Natural Resource Conservation Commission for on-site sewage facility installations.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613847  
Ernest Pereyra, CPA  
Chief Fiscal Officer  
State Board of Plumbing Examiners  
Earliest date of adoption: October 24, 1996  
For further information, please call: (512) 458-2145

◆ ◆ ◆  
Chapter 365. Licensing

Renewal

22 TAC §365.5

The State Board of Plumbing Examiners proposes an amendment to §365.5. This section specifies the process to renew a plumbing license. The amendment states that individuals with a medical gas endorsement must take two hours of additional continuing education during the third year of their medical gas endorsement in order to renew their license.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that each year of the first five years the rule is in effect the change in public benefit will be a higher quality of plumbers performing medical gas work. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The amendment is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-101, §§5(a) and 12B(a) (Vernon 1996).

§365.5. *Renewals.*

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

(e) Any journeyman plumber, master plumber, or plumbing inspector wishing to renew a license must submit to the administrator board-approved documentation of successful completion within the previous license year of six hours of board approved continuing education, **subject to the additional requirement in (f) below.** No inactive license may be issued or renewed after September 1, 1996.

**(f) Any license holder with a medical gas endorsement must take two additional classroom hours of continuing education within the third year of the endorsement period. The two additional classroom hours shall consist of instruction of the most current edition of the NFPA99C and the changes therein.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613839  
Ernest Pereyra, CPA  
Chief Fiscal Officer

State Board of Plumbing Examiners  
Earliest date of adoption: October 24, 1996  
For further information, please call: (512) 458-2145

◆ ◆ ◆  
Chapter 365. Licensing

Continuing Education Programs

22 TAC 365.14

The State Board of Plumbing Examiners proposes an amendment to §365.14. This section specifies the process for providers to offer continuing education to plumbers. The amendment specifies that instructors of medical gas endorsement continuing education must comply with the requirements in §363.11(a) (Endorsement Training Programs).

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that each year of the first five years the rule is in effect the change in public benefit will be to clarify that instructors of the medical gas endorsement must also comply with §363.11(a). The amendment will provide individuals receiving continuing education with higher quality continuing education in this specialized area. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The amendment is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-101, §§5(a) 12B(b) and 12B(c) (Vernon 1996).

§365.14. *Continuing Education Programs.*

(a) (No change.)

(b) Instructors must be licensees of the Board, successfully complete the instructor certification workshop each year conducted by the Board, and be employed by a provider approved by the Board.

**(1)** In addition to the requirements in (b) above, instructors of medical gas endorsement continuing education must comply with the requirements in §363.11(a) (Endorsement Training Programs) of these rules.

(c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613840  
Ernest Pereyra, CPA  
Chief Fiscal Officer  
State Board of Plumbing Examiners  
Earliest date of adoption: October 24, 1996  
For further information, please call: (512) 458-2145

◆ ◆ ◆  
Chapter 367. Enforcement

Standard of Conduct

22 TAC §367.2

The State Board of Plumbing Examiners proposes an amendment to §367.2. This section specifies the standards of conduct for a plumber in the performance of their job. This amendment specifies that a licensed plumber's responsibilities do not differ in cities with over 5,000 inhabitants from areas with under 5,000 inhabitants or in unincorporated areas.

Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Pereyra also has determined that each year of the first five years the rule is in effect the public benefit will be to make it clear that a licensed plumber's responsibilities do not differ in cities with over 5,000 inhabitants from areas with under 5,000 inhabitants or in unincorporated areas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Ernest Pereyra, Chief Fiscal Officer, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin 78765-4200.

The amendment is proposed under and effect Texas Revised Civil Statutes Annotated Article 6243-01, §§5(a) (Vernon 1996).

§367.2. *Standards of Conduct.*

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

(e) **Responsibilities of Plumbing licensees outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than 5,000 inhabitants. The responsibilities of plumbing licensees outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than 5,000 inhabitants are the same as those responsibilities within any city, town or village in excess of 5,000 inhabitants. In areas where no plumbing code is adopted one of the state approved codes shall be followed by the licensed plumber.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613843

Ernest Pereyra, CPA

Chief Fiscal Officer

State Board of Plumbing Examiners

Earliest date of adoption: October 24, 1996

For further information, please call: (512) 458-2145

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

Part I. Texas Department of Health

Chapter 143. Medical Radiologic Technologists

25 TAC §§143.2, 143.4-143.9, 143.16, 143.19, 143.20

The Texas Department of Health (department) proposes amendments to §143.2, §§143.4 - 143.9, and new §§143.16, 143.19 and 143.20, concerning the regulation of persons performing radiologic procedures. The amendments add definitions for cardiovascular and pediatric; add fees for limited curriculum programs offered by accredited education programs; clarify the applicability of the rules and hardship exemptions; establish new and clarify existing application requirements and procedures; establish a new type of certificates and applicant eligibility; add a limited examination for the cardiovascular category; set out new procedures and strengthen the existing standards for the approval of curricula and instructors; identify dangerous or hazardous radiologic procedures; establish hardship exemption criteria and procedures; and establish alternative training requirements for registered nurses, physician assistants, and podiatric medical assistants who perform radiologic procedures.

The amendments will add a new limited certificate category for cardiovascular, allow a new administrative procedure for general certificate programs to qualify as limited curriculum programs, strengthen the rules related to limited certificate programs, provide an administrative procedure and require submission of fees for amending limited certificate programs, and update and clarify the existing rules.

The new §143.16, §143.19 and §143.20 will implement Acts 1995, 74th Legislature, Chapter 613 (House Bill 1200), which amended the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m. New §143.16 includes a proposed effective date of March 1, 1997.

Concerning §143.16 relating to dangerous or hazardous procedures, the criteria for determining whether a procedure is dangerous or hazardous are as follows. A dangerous procedure is any procedure which if incorrectly or inappropriately performed may produce a high dose rate which is capable of producing damaging biological effects, including nonstochastic as well as stochastic effects; or result in a reduction of image quality, in the case of diagnostic imaging procedures, to the extent that the diagnostic information content of the image is significantly diminished; or result either in increased or unintended tissue damage, or significantly diminish the intended therapeutic effect, in the case of therapeutic procedures. A hazardous procedure is any procedure which if incorrectly or inappropriately performed may significantly increase the expected risk of a radiation induced stochastic effect; or result in the reduction of image quality to the extent that the diagnostic information content of the image is significantly diminished.

The proposed new §143.16 reflects the list of procedures recommended to the Texas Board of Health (board) by the Medical Radiologic Technologist Advisory Committee (committee). The committee is composed of one medical physicist, one radiologist, two consumers and five medical radiologic technologists, including one nuclear medicine technologist and one radiation therapist. The board requests comments on whether the list of procedures is appropriate. If the commenter disagrees with the

list of procedures, the commenter should state why he or she believes the specific radiologic procedure should or should not be on the list.

The proposed new §143.19 sets out the administrative procedures for applying for and granting hardship exemptions for hospitals, federally qualified health centers and practitioners. The criteria is intended to reflect the statutory language. The proposed new §143.20 establishes training requirements for registered nurses, physician assistants and podiatric medical assistants which are an alternative to existing §143.17, Mandatory Training Programs for Non-Certified Technicians, adopted in June 1996. The criteria reflects input given to the department by the specific groups addressed in the proposal. The board requests comments on the proposed language. If the commenter disagrees with the language, the commenter should state why he or she believes the proposed language should not be adopted.

Bernie Underwood, CPA, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five year period that the sections as proposed will be in effect, there will be fiscal implications as a result of enforcing or administering the sections.

The effect on the department for the first five year period the sections are in effect will be as follows. For fiscal year (FY) 1997, there will be an estimated increase in revenue of \$31,750 with an increase in costs of \$40,350. For FY 1998, there will be an estimated increase in revenue of \$44,775 with an increase in costs of \$94,775. For FY 1999, there will be an estimated increase in revenue of \$27,125 with an increase in costs of \$77,125. For FY 2000, there will be an estimated increase in revenue of \$23,425 with an increase in costs of \$73,425. FY 2001, there will be an estimated increase of \$15,925 in revenue for each year with an increase in costs of \$65,925 for each year. There will be no fiscal implications on local governments anticipated as a result of administering the sections proposed.

The cost of administering §143.19 cannot be recovered because the department has no statutory authority to collect fees for hardship exemptions.

Ms. Underwood has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed §143.16 will be to assure that the public is protected from the harmful effects of radiation used for medical purposes. The public benefit of new §143.19 is to provide a procedure for approving bona-fide hardship exemptions from the regulations which should minimize the effect of the new regulations on access to care. It is important to note that a person or entity with an approved hardship exemption may not employ a person who is not a practitioner or certified medical radiologic technologist to perform a procedure listed in §143.16. The public benefits anticipated as a result of proposed §143.20 will be to recognize the post-secondary school education or registered nurses and physician assistants and to specify unique training requirements for persons who will x-ray only the foot and ankle. The particular training requirements for these groups are intended to minimize the possibility of redundant or unnecessary training. The public benefit of the amendments are to update the existing rules so they are consistent with new sections and new legislation,

to provide pathways for qualified persons to obtain limited certificates in medical radiologic technology, to strengthen the regulation of limited certificate education programs and to recover the cost of administering the limited certificate education programs.

The anticipated cost to individuals for a limited certificate in the cardiovascular category under the section as proposed will be a one time fee of \$75 in 1997 for certification for biennial renewal of certification, a fee of \$40 in 1999 and again in 2001. The anticipated cost to general certificate programs seeking approval for the limited curriculum, an annual fee of \$225 for each of the years 1997 - 2001. The anticipated cost to limited curriculum programs submitting amendments shall be a fee of \$40 each time an amendment is submitted for the years 1997 - 2001.

The anticipated effect on local employment will be that a non-certified technician will not be permitted to perform a dangerous or hazardous radiologic procedure after March 1, 1997.

Comments on the proposal may be submitted to Donna Flippin, MHSM, Administrator, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas, 78756-3183; Phone: (512) 834-6617; FAX (512) 834-6677. Public hearings are scheduled as follows: Tuesday, October 15, 1996, 5:30 p.m., Medical Center Hospital - Odessa, 500 West 4th Street, Odessa, Texas; Tuesday, October 15, 1996, 6:00 p.m., Wisenbaker Conference Center, Mother Frances Hospital Campus, 800 East Dawson, Tyler, Texas; Thursday, October 17, 1996, 6:00 p.m., Knipling Education Conference Center, 3615 21st Street (21st and Louisville), Lubbock, Texas; Wednesday, October 23, 1996, 5:30 p.m., St. David's Medical Center, 919 East 32nd Street, Austin, Texas. Comments will be accepted for 30 days following publication of these rules in the *Texas Register*.

The amendments, and new sections are proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e) which provides the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a) concerning rules on certificates and education programs; §2.05(g), (h) and (k) concerning rules on dangerous or hazardous procedures; §2.05(j) concerning hardship criteria determined by department rule; and §2.09 concerning rules on applications for certificates and approval of curricula, training programs, and instructors; and the Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new sections are affected by Texas Civil Statutes, Article 4512m.

#### *§143.2. Definitions.*

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

**Cardiovascular (CV) - Relating to the heart and blood vessels or the circulation.**

**Pediatric - A person within the age range of fetus to age 18, when the growth and developmental processes are generally complete.**



**These rules do not prohibit a practitioner taking into account the individual circumstances of each patient and determining the upper age limit requires variation by not more than two years.**

*§143.4. Fees.*

- (a) (No change.)
- (b) The schedule of fees is as follows:
  - (1)-(16) (No change.)
  - (17) training program application fee - \$350; [and]
  - (18) training program renewal fee - \$150 ;
  - (19) limited curriculum amendment fee - \$40; and**
  - (20) annual limited curriculum approval fee for general certificate programs - \$225.**

*§143.5. Applicability.*

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

(d) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §143.16 of this title (relating to Dangerous or Hazardous Procedures) by the following:

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

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a hardship exemption was granted to the hospital, FQHC or practitioner by the department during the previous 12-month period **under §143.19 of this title (relating to Hardship Exemptions).** [.]

*§143.6. Application Requirements and Procedures.*

- (a) (No change.) .

(b) General.

- (1) (No change.)

(2) The department shall not consider an application as officially submitted until the applicant pays the **correct** [application] fee **in accordance with §143.4 of this title (relating to Fees).** The **correct** fee must accompany the application form.

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

(c) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security number [(optional)], birth date, current and previous places of employment, other state licences and certificates held, misdemeanor and felony convictions, and educational and training background;

- (B) - (J) (No change.)

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) **or** (c) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents or qualify under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements):

(A) if the applicant is not a graduate of or expected to graduate within **28 calendar** [20] days from a general certificate program in accordance with §143.9(b) of this title (relating to

Standards for the Approval of Curricula and Instructors), a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; a certificate of high school equivalency issued by the appropriate educational agency; or an official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) at least one of the items set out as follows:

(i)-(ii) (No change.)

(iii) if applying prior to graduation, from an approved medical radiologic program in accordance with §143.9 of this title, an expected graduation statement signed by the program director or registrar. [Within 30 days of the completion date noted in the graduation statement, the department must receive:]

[(I) a notarized photocopy of the certificate of completion or letter on letterhead indicating graduation, containing the items set out in clause (i) of this subparagraph; or]

[(II) a notarized statement signed by the program director or registrar indicating that the applicant officially completed the program.]

(3) (No change.)

(d) (No change.)

(e) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) - (H) (No change.)

(I) has engaged in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the board in §143.14 of this title (relating to **Violations and Subsequent** [Disciplinary] Actions);

(J) - (O) (No change.)

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

(f) (No change.)

*§143.7. Types of Certificates and Applicant Eligibility.*

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

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsections (b) or (c) of this section:

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

(6) eligibility for the specific certificate requested as set out in **subsections** [subsection] (e), (f), (g), (h), or (i) of this section.

(e) (No change.)

(f) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (d) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; chiropractic; [and] podiatry; **and cardiovascular.**

(2) (No change.)

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, and nuclear medicine or radiation therapy procedures. **However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and fluoroscopic equipment for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.**

(4) To qualify for a certificate as an LMRT an applicant must provide documentary evidence satisfactory to the department of the following:

(A) (No change.)

(B) current licensure or registration as **an** [a] LMRT by another state, District of Columbia, or territory of the United States of America whose requirements are more stringent than or substantially equal to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as **an** [a] MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee.

(g) Temporary medical radiologic technologist (general [or limited]). To qualify as a temporary medical radiologic technologist (general [or limited]), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section. [(1)] For the general temporary certificate, an applicant must:

(1)[(A)] have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by the Committee on Allied Health Education and Accreditation (CAHEA);

(2) [(B)] be approved by the ARRT as examination eligible;

(3) [(C)] be approved by the NMTCB as examination eligible; **or**

(4) [(D)] be currently licensed or otherwise registered as **an MRT** [a medical radiologic technologist] by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(h)[(2)] **Temporary limited medical radiologic technologist. The** [For the temporary limited certificate, the] applicant [must] **shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section. The applicant must:**

(1) have successfully completed or be within 28 calendar days of successful completion of a [course of study in] **limited certificate program** [practice] **in the categories of skull, chest, spine, abdomen or extremities, which is approved in accordance**

with §143.9(c) of this title (relating to Standards for the Approval of Curricula and Instructors) [by the department];[or]

(2) **be currently enrolled in a course of study in a general certificate program approved in accordance with §143.9(b) of this title and have been issued a certificate of completion by the program signifying that the person has completed classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum, as set out in §143.9(e) of this title; or**

(3) be licensed or registered as **an LMRT** [a limited medical radiologic technologist] by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(i) [(h)] Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §143.10(h) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be filed with the application processing fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required except payment of the certification fee.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §143.6(e) of this title (relating to Application Requirements and Procedures).

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(j) [(i)] Alternate eligibility. An individual who does not qualify under subsections (a) - (i) [(h)] of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

#### §143.8. Examinations.

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

(d) Approved examination for the limited certificate. A limited certificate shall be issued upon successful completion of the appropriate examination, as follows:

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

(5) chiropractic - the ARRT examinations for the limited scope of practice in radiography (spine and extremities); [or]

(6) podiatric - the ARRT examination for the limited scope of practice in radiography (podiatry); **or**

(7) **cardiovascular - the Cardiac Credentialing International invasive registry examination.**

(e)-(i) (No change.)

*§143.9. Standards for the Approval of Curricula and Instructors.*

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

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must [either]:

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology; [or]

(2) **be accredited by the Joint Review Committee for Cardiovascular Technology (JRCCVT) to offer a curriculum in invasive cardiovascular technology;**

(3) **be accredited by JRCERT under subsection (b) of this section; or**

(4)[(2)] be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (d) - (h) of this section apply only to department-approved programs.

(d) Application procedures for limited certificate programs **which are not accredited by JRCERT or JRCCVT.** An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

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

(6) The application shall include:

(A)-(D) (No change.)

(E) a list of clinical facilities, **written agreements on forms prescribed by the department** [letters of agreement] from clinical facilities signed by the **program director and the** chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility **in accordance with paragraph (10) of this subsection.** The items are:

(i)-(v) (No change.)

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures; [and]

(vii) an acknowledgement that the students **in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic or podiatric** shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; **and**

(viii) **an acknowledgement that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.**

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration **and by which the program director shall administer the program.** The admission requirements shall include the minimum eligibility requirements for certification in accordance with §143.7(c)(1) - (2) of this title (relating to Types of Certificates and Applicant Eligibility).

(G) - (J) (No change.)

(7) (No change.)

(8) In making application to the department, the program director shall agree in writing to:

(A) - (E) (No change.)

(F) keep **an accurate** [a] record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G) - (J) (No change.)

(9) (No change.)

(10) **Following program approval, a written request(s) for amendment(s) shall be submitted to and approved by the department in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with §143.4 of this title.**

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

(g) Instructor approval for limited certificate programs.

(1) All persons who plan to or who **will** provide instruction and training in the limited certificate courses of study or programs shall:

(A) - (C) (No change.)

(2)-(4) (No change.)

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and **not less than six months classroom** experience [in] teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) - (C) (No change.)

(2) (No change.)

(i) Transition. [The currently approved] **Limited certificate** programs **approved as of June 28, 1996,** shall have one year [from the date of adoption of this amended section] to comply with the [new] requirements **adopted on June 28, 1996. Limited certificate programs approved after June 28, 1996, shall comply with the requirements in effect at the time of application to the department.**

(j) **Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.**

(1) **Application shall be made by the program director on official forms available from the department.**

(2) **The application must be notarized and shall be accompanied by the following items:**

(A) **the limited curriculum application fee, in accordance with §143.8 of this title (relating to Fees);**

(B) **a copy of the current accreditation issued to the program by the JRCERT;**

(C) **a description in narrative and/or table format clearly indicating that the curriculum of the general certificate program and the sequencing of the curriculum are equal to the limited certificate curriculum; and**

(D) **an agreement to allow the department to conduct an administrative audit of the program to determine compliance with this section.**

*§143.16. Dangerous or Hazardous Procedures.*

(a) Purpose. The purpose of this section is to identify the radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). There are specific procedures identified in subsections (b) and (c) of this section which may be performed by a registered nurse (RN) or a certified physician assistant (PA) trained under §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §143.20 of this title (relating to Alternative Training Programs). A person trained under §143.17 or §143.20 of this title and placed on a registry under §143.18 (relating to Registry of Non-Certified Technicians) of this title is not an MRT, LMRT or otherwise certified under the Medical Radiologic Technologist Certification Act (Act) and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted under this section.

(b) Dangerous procedures identified. Unless otherwise noted, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

- (1) nuclear medicine studies;
- (2) administration of radio-pharmaceuticals, unless performed by an RN or PA who is appropriately trained;
- (3) radiation therapy, including brachytherapy;
- (4) computed tomography (CT) or any variation thereof;
- (5) interventional radiographic procedures, including angiography, unless performed by an LMRT with a certificate issued in the cardiovascular category;
- (6) fluoroscopy and/or fluorography, unless performed by an LMRT with a certificate issued in the cardiovascular category; and
- (7) cineradiography, unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures identified. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

- (1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell and Waters views;

(3) mobile radiography;

(4) pediatric radiography, excluding extremities, unless performed by an RN or PA who is appropriately trained, as set out in §143.17 or §143.20 of this title. If an emergency condition exists which threatens serious bodily injury, protracted loss of use of a bodily function or death of a pediatric patient unless the procedure is performed without delay, a pediatric radiographic procedure is also excluded. The emergency condition must be documented by the ordering practitioner in the patient's clinical record and the record must document that a regularly scheduled MRT, LMRT, RN or PA is not reasonably available to perform the procedure;

(5) spine radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral and lateral flexion/extension views;

(6) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula;

(7) pelvic girdle radiographs, excluding AP or PA views;

(8) sternum radiographs; and

(9) radiographic procedures which utilize contrast media.

(d) Performance of a hazardous procedure by an LMRT. An LMRT may perform a radiologic procedure listed in subsection (c) of this section only if the procedure is within the scope of the LMRT's certification, as described in §143.7(f) of this title (relating to Types of Certificates and Applicant Eligibility).

(e) Performance of a dangerous or hazardous procedure by a practitioner. This section does not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(f) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panorex or other equipment designed and manufactured only for use in dental radiography.

(g) Mammography. In accordance with the Health and Safety Code, §§401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT (not an LMRT) who meets the qualifications set out in §289.230(d)(2) of this title (relating to Mammography). Mammography shall not be performed by a practitioner, an LMRT, an NCT or any other person.

(h) Prohibited act. A person who performs a dangerous or hazardous procedure in violation of the Act, §2.13(a)(1) commits a Class B misdemeanor, punishable by up to 180 days in jail or a fine up to \$2,000, or both.

(i) Effective date. This section shall become effective on March 1, 1997.

*§143.19. Hardship Exemptions.*

(a) Purpose. The purpose of this section is to set out the procedure for applying for a hardship exemption under the Medical Radiologic Technologist Certification Act (Act), §2.05(i) and (j) for a hospital, federally qualified health center (FQHC), or practitioner.

(b) General.

(1) A hospital, FQHC or practitioner may apply to the Texas Department of Health (department) for an exemption from employing a medical radiologic technologist (MRT), limited medical radiologic technologist (LMRT), or non-certified technician (NCT).

(2) The applicant must demonstrate a hardship as described in subsection (c)(4) of this section in employing an MRT, LMRT, or NCT.

(3) The applicant shall not allow a person who is not an MRT, LMRT, or NCT to perform a radiologic procedure until the department grants a hardship exemption.

(4) A hardship exemption granted by the department does not constitute licensure, certification, registration or authorization to perform a dangerous or hazardous radiologic procedure or mammography.

(c) Required application materials.

(1) The applicant must apply for a hardship on the forms prescribed by the department. The date of application shall be the date the application is postmarked. If there is no visible postmark, or if the application is hand-delivered, the application date shall be the date the administrator received the application.

(2) The application must be accompanied by documentation clearly indicating that the applicant is a licensed hospital, FQHC or licensed practitioner. A copy of the current hospital license, certificate of qualification issued to the FQHC, or current license of the practitioner shall be acceptable documentation.

(3) If the application is from a hospital or FQHC, the administrator or chief executive officer of the hospital or FQHC must sign the application form. If the applicant is a practitioner, the practitioner must sign the application form.

(4) The application shall be accompanied by one or more of the following:

(A) if the applicant is unable to attract or retain an MRT or LMRT, a sworn affidavit describing in narrative form the applicant's attempts to attract and retain an MRT or LMRT at a comparable salary for the area;

(B) if the applicant is located more than 50 highway miles from the nearest school of medical radiologic technology approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors), a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC, or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC, or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(C) if the nearest school of medical radiologic technology approved in accordance with §143.9 of this title has a waiting list of school applicants due to a lack of faculty or space, a sworn affidavit from the applicant indicating that admissions to the school are pending because of a lack of faculty or space;

(D) if the need for graduates in medical radiologic technology of the applicant exceeds the number of graduates from the nearest school of medical radiologic technology approved in accordance with §143.9 of this title, a sworn affidavit from the applicant

indicating that the number of graduates from the nearest school does not meet the applicant's needs for radiologic technologists;

(E) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event; or

(F) documentation that the United States government has declared a state of war.

(5) All application materials and information are subject to verification by the department.

(6) The department shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(d) Application approval.

(1) The administrator shall be responsible for reviewing all applications. The administrator shall approve any application which is in compliance with this section and which properly documents applicant eligibility.

(2) If granted by the department, a letter of exemption shall be issued for a period of one year.

(e) Disapproved applications.

(1) The department shall disapprove the application if the applicant has not met the application requirements set out in this section or has failed or refused to complete or submit any form or documentation required by the department to verify the eligibility for the exemption.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval. The applicant may appeal the decision to the associate commissioner over the administrator by submitting a written request within ten days after receipt of the written notice of the reason(s) for the disapproval.

(3) Based upon the application and any additional information submitted by the applicant or the administrator, the associate commissioner shall approve or disapprove the application.

(4) An applicant whose application has been disapproved under this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a new application and supporting information. The applicant may reapply for an exemption anytime the basis for the exemption application changes.

(f) Application processing. The department shall use the same process as described in §143.6(f) of this title (relating to Application Requirements and Procedures), except the time periods are as follows:

- (1) letter of acceptance - 30 days;
- (2) letter of application deficiency - 30 days;
- (3) letter of approval - 42 days; and

(4) letter of denial of exemption - 42 days.

(g) Reapplication for hardship exemption.

(1) The hospital, FQHC, or a practitioner must reapply annually for the exemption and meet the then current requirements for a hardship exemption.

(2) A hospital, FQHC, or a practitioner who does not reapply for an exemption shall not allow a person to perform a radiologic procedure unless the person is a practitioner, MRT, LMRT, or NCT.

*§143.20. Alternate Training Requirements.*

(a) Purpose. The purpose of this section is to set out the minimum standards for registered nurses (RNs), physician assistants (PAs) and podiatric medical assistants (PMAs).

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence.

(1) Effective January 1, 1998, before an RN or PA performs a radiologic procedure, the RN or PA must complete the hours stated in subsection (d) of this section, or the hours stated in §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians).

(2) Effective January 1, 1998, before an PMA performs a radiologic procedure, the PMA must complete the hours stated in subsection (e) of this section, or the hours stated in §143.17(d) of this title concerning podiatric radiologic procedures.

(3) Individuals who complete training approved under this section may not use that training toward the educational requirements for a general or limited certificate as set out in §143.7 of this title (relating to Types of Certificates and Eligibility).

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the Texas Department of Health (department) to teach in a training program if the individual meets the requirements of §143.9(h)(1)-(2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) A limited medical radiologic technologist (LMRT) may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. For example, an LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and PAs to perform

radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or PA. The training shall consist of:

(1) a minimum of 32 classroom hours of coursework that are fundamental to diagnostic radiologic procedures covering all of the following items:

(A) radiation safety and protection for the patient, self and others - 10 classroom hours;

(B) radiologic equipment - 10 classroom hours;

(C) image production and evaluation - 10 classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects - 2 classroom hours; and

(2) one or more of the following units of classroom instruction in radiologic procedures:

(A) chest and abdomen (non-pediatric) - 8 classroom hours;

(B) spine (non-pediatric) - 8 classroom hours;

(C) skull (non-pediatric) - 8 classroom hours;

(D) extremities (including pediatric) - 8 classroom hours; and

(3) if the RN or PA will perform pediatric radiologic procedures other than extremities, a minimum of two classroom hours for each of the areas identified in paragraph (2)(A)-(C) of this subsection.

(e) Training requirements for podiatric medical assistants.

(1) In order to successfully complete a program, a PMA must complete the following training:

(A) radiation safety and protection for the patient, self, and others - 10 classroom hours;

(B) radiographic equipment used in podiatric medicine, including safety standards, operation and maintenance - 3 classroom hours;

(C) podiatric radiologic procedures, imaging production and evaluation - 5 classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects - 2 classroom hours.

(2) Successful completion of PMA training allows the PMA to perform radiologic procedures only under the instruction or direction of a podiatrist.

(f) Application procedures for training programs. The Texas Department of Health

(department) shall use the same process as described in §143.17(e) of this title.

(g) Application materials. The department shall require the same materials as described in §143.17(f) of this title.

(h) Application approval. The department shall use the same process as described in §143.17(g) of this title.

(i) Application processing. The department shall use the same process as described in §143.17(h) of this title.

(j) Renewal. The department shall use the same process as described in §143.17(l) of this title.

(k) Previously completed training. A person who has completed part or all of the training described in subsections (d) or (e) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsections (d) or (e) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non-Certified Technicians).

(1) Unless the person is an RN or PA, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.

(2) Previously completed training shall be acceptable only if it was:

(A) completed at an education program approved under §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) or §143.17 of this title;

(B) live, inter-active, and instructor-directed and meets the requirements for acceptance as continuing education credit for medical radiologic technologists or limited medical radiologic technologists as set out in §143.11 of this title (relating to Continuing Education Requirements); or

(C) accepted for continuing education credits by the Board of Nurse Examiners.

(3) If a person has completed part of the training described in subsections (d) or (e) of this section, the program director of the training program shall verify that the previously completed hours comply with this section.

(4) If a person has completed all of the training described in subsections (d) or (e) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.

(5) Verification of previously completed training shall be made by reviewing only original certificates, official transcripts, printed course curriculum, syllabi, outlines or other documentation acceptable to the department issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will be not accepted for review.

(6) This subsection shall expire on January 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 23, 1996.

TRD-9613882

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 458-7236

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 11. Health Maintenance Organizations

#### Subchapter R. Solvency Standards for Managed Care Organizations Participating in Medicaid

##### 28 TAC §§11.1801-11.1805

The Texas Department of Insurance proposes new §§11.1801-11.1805, concerning the solvency standards required for managed care organizations participating in the Medicaid Program administered by the State of Texas. Article 4413(502) §§16A-16G of the Texas Civil Statutes (as amended by Senate Bill 10 enacted in the 74th Legislature) provides for the development of a health care delivery system for the State Medicaid Program, and grants the Commissioner of Insurance the authority to promulgate regulations creating standards of solvency for participating managed care organizations. Moreover, Article 1.61 of the Texas Insurance Code (as amended by Senate Bill 600 enacted in the 74th Legislature) requires the Texas Department of Insurance, in conjunction with the Texas Department of Health, to establish fiscal solvency standards for managed care organizations serving State Medicaid clients. This proposed regulation has been presented to and approved for publication by the State Medicaid Office and the advising MCAC Committee on September 12, 1996.

Sections 11.1801-11.1805 are proposed as subchapter S relating to the standards of solvency previously described. The sections are necessary to establish the standards required under Article 4413(502) §§16A-16G of the Texas Civil Statutes and Article 1.61 of the Texas Insurance Code. Section 11.1801 specifies the entities subject to this regulation, and requires compliance with other regulatory standards and requirements associated with a particular MCO. Section 11.1802 provides for minimum solvency requirements, which are effected by the existence of an unconditional guarantee from a sponsoring organization for the benefit of a MCO that complies with §11.1804. In addition, existing MCOs with Medicaid contracts are grandfathered for one year under §11.1802. Sections 11.1803 and 11.1805 delineate the requirements for statutory deposits and performance and fidelity bonds.

The new sections are proposed in conjunction with the related regulations being adopted and/or amended by the Texas Health and Human Services Commission, 1 TAC Chapter 353 (21 TexReg 7303), the Texas Department of Health, 25 TAC Chapter 30 (21 TexReg 7322), and the Texas Department of Mental Health and Mental Retardation, 25 TAC Chapter 401 (21 TexReg 7335).

Jose Montemayor, associate commissioner of the financial program, has determined that for each year of the first five years the new sections are in effect there will be no fiscal implications for state and local governments as the result of administering this section. There is no anticipated additional effect on local employment or the local economy, reduction in costs to local

governments, or loss or increase in revenue to state or local governments as a result of administering and enforcing the proposed section.

Because of the voluntary nature of participating in the State Medicaid Program, Mr. Montemayor also has determined that for each year of the first five years the new sections are in effect the anticipated economic cost to persons who must comply with the section is none. Moreover, a prudently operated payor of health care services should already meet the requirements in this regulation. If a MCO does not currently meet these solvency standards and it voluntarily decides to participate in the State Medicaid Program, then the costs to that MCO include the fees associated with the MCO's effort, if any, to raise additional capital. An estimated cost for raising capital, though subject to many variables and factors which are not identifiable in a general context, is 20% of the capital raised. However, the capital of a MCO represents assets owned by and available to the MCO, and thus are not a true cost to the MCO. In most cases, the department anticipates that no other costs would increase for a MCO; however, because of the existing work loads of the employees, one or two entities choosing to participate in the State Medicaid Program may need to hire one part-time employee to service the requirements for the statutory deposit, guarantees, and fidelity and performance bonds. In that event, the MCO's expenses would increase in the amount associated with the compensation of the part-time employee and any associated "benefits" provided to the employee, and this cost is subject to the internal personnel decisions of a MCO. If a MCO chooses the option to obtain a guarantee from a sponsoring organization and does not have certified financial statements, then the sponsoring organization would have to expend up to \$25,000 per year for the services of a CPA to meet the requirements of §11.1804 of this subchapter. In addition, the cost associated with the performance bond described in §11.1805 is subject to the rates filed and used by the insurers. Only one rate of \$10/\$1,000/annum has been filed with the department, and other rates are expected in varying amounts approximating this first filing. Finally, it is also anticipated that there will be no adverse economic impact on small business, and no difference between small and large employers.

Mr. Montemayor also has determined the public benefit resulting from the standards is the creation of an overall buffer and safety net for the state and for creditors, and to reasonably ensure the financial ability of the managed care organizations to pay for the delivery of health care services. Moreover, Mr. Montemayor notes that no guaranty fund coverage exists in the event of an insolvency of a HMO, and these rules are designed to provide for the transition, without excessive costs to the state, of Medicaid clients from HMOs less likely to meet their obligations to HMOs that are more financially sound.

Comments on this proposal must be submitted in writing within 30 days after publication of this section in the *Texas Register* to the Chief Clerk of the Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas, 78714-9104, with a copy to José Montemayor, associate commissioner of the financial program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas, 78714-9104. A request for public hearing on the new section should be submitted separately to the Office of the Chief Clerk.

This subchapter is proposed pursuant to Article 1.61 of the Texas Insurance Code which directs the Commissioner of Insurance to adopt fiscal solvency standards for the State Medicaid Program, and Article 4413(502) §§16A-16G of the Texas Civil Statutes which provides for the development of a system to deliver Medicaid benefits including the creation of solvency standards. Article 1.03A of the Texas Insurance Code authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the Texas Department of Insurance.

The proposed regulation affects Article 4413(502) §§16A-16G of the Texas Civil Statutes and Article 1.61 of the Texas Insurance Code. Moreover, the following regulations are proposed in conjunction with this new subchapter: the related regulations being adopted and/or amended by the Texas Health and Human Services Commission, 1 TAC Chapter 353 (21 TexReg 7303), the Texas Department of Health, 25 TAC Chapter 30 (21 TexReg 7322), and the Texas Department of Mental Health and Mental Retardation, 25 TAC Chapter 401 (21 TexReg 7335).

*§11.1801. Entities Covered.*

(a) As used in this subchapter, a managed care organization is an entity holding a certificate of authority to operate as an HMO under Chapter 20A of the Texas Insurance Code or as an approved nonprofit health corporation under Article 21.52F of the Texas Insurance Code.

(b) Any managed care organization or other entity providing the services specified in 42 United States Code §1396b(m)(2)(A) and participating in the State Medicaid Program (all hereinafter referred to as a "MCO") must first comply with the requirements and solvency standards set forth in this subchapter, and must not be in a hazardous financial condition as defined in Article 20A.19 of the Texas Insurance Code or 28 Texas Administrative Code Chapter 8 where pertinent to managed care organizations. In addition, any MCO already subject to regulation of any kind, must be in compliance with any solvency standard and/or requirement pertinent to its regulation, as well as all applicable licensing laws and regulations.

(c) Notwithstanding any other provision in this subchapter, if a MCO had a Medicaid contract in effect immediately prior to August 1, 1996 and if that MCO is subject to this subchapter, then that MCO must comply with the requirements in this subchapter within one year after becoming subject to this subchapter.

*§11.1802. Minimum Surplus or Net Worth.*

(a) Subject to the reduction specified in §11.1804 of this title and the exception specified in §11.1801 of this title, a MCO must possess the greater of:

(1) \$1.5 million of admitted assets in excess of all liabilities plus sufficient capital of a nature acceptable to the Texas Department of Insurance (hereinafter the "department") to cover the first 18 months of reasonably projected losses, with the 18 months beginning from the date of inception of the initial Medicaid contract executed with the MCO which is subject to this subchapter; and

(2) a minimum net worth equal to \$25 per existing enrollee plus the number of reasonably projected enrollees for the next 12 months, which projection may not be a negative number.

(b) In addition, a MCO must infuse capital in a form acceptable to the department at the end of every 6 months to fund



any losses in excess of its originally projected losses or to maintain the \$25 per enrollee requirement provided above.

*§11.1803. Statutory Deposits.*

(a) As used in this section, "uncovered health care expenses" means the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the MCO.

(b) Subject to the reduction specified in §11.1804 of this title, a MCO must have on deposit with the Office of the Comptroller of Public Accounts of Texas the greater of:

(1) \$500,000; and

(2) an amount equal to uncovered health care expenses incurred for the previous calendar year. If a MCO has not existed for a full calendar year, then this amount must equal the reasonably projected uncovered health care expenses for the first 12 months of operation.

(c) This deposit may be used to fully protect the interests of the enrollees of the MCO, including but not limited to the payment of the costs delineated in §11.1805(a)(2)(C) of this title or related to uncovered health care services. Any deposit is subject to the practices of the department for the establishment, maintenance, and release of statutory deposits of insurance companies.

*§11.1804. Guarantees.*

(a) As used in this section, the phrase "certified audited financial statements" means financial statements audited by a CPA utilizing Generally Accepted Auditing Standards which attest that the financial condition of the MCO is fairly represented in accordance with Generally Accepted Accounting Principles.

(b) If and only if a guarantee issued for the benefit of a MCO satisfies the conditions and requirements set forth in this section, then the \$1.5 million figure required in §11.1802(a)(1) of this title is reduced to \$1 million and the \$500,000 figure required in §11.1803(b)(1) of this title is reduced to \$250,000.

(c) A guarantee must:

(1) be unconditional and approved by the department, filed with the Texas Department of Health, and provide for 6 months advance notice to the department and the Texas Department of Health prior to its cancellation; and

(2) be executed by a sponsoring organization with a minimum tangible net worth equal to \$10 million for each guarantee it has issued, and be supported by resolutions of its Board of Directors which are properly created, certified, and filed with the department and the Texas Department of Health. In addition, the sponsoring organization must timely provide to the department and the Texas Department of Health certified audited financial statements for the most recent fiscal year, a report identifying in detail all guarantees issued or made, and notification in detail of any guarantees issued or made while a guarantee described in paragraph (1) of this subsection is in force or exists.

(d) If at any time a guarantee issued for the benefit of a MCO does not comply with each and every condition and requirement of this section, then the reductions provided in this section terminate and the amounts stated in §11.1802(a) and §11.1803(b) of this title immediately apply to the MCO.

*§11.1805. Performance and Fidelity Bonds.*

(a) A MCO must provide a performance bond to the Texas Department of Health, and file a copy with the department, which:

(1) names the Texas Department of Health as the obligee;

(2) provides for the faithful performance of the MCO in accordance with the contract and all specifications related to the Medicaid Program, and covers:

(A) any expenses (including, but not limited to, administrative, personnel and legal expenses) incurred by the Texas Department of Health resulting from a MCO's non-performance,

(B) the additional costs for services rendered after the termination of a contract for non-performance until other arrangements for services are made, and

(C) any costs for services not paid by the MCO under its contract that ultimately may be the responsibility of the Texas Department of Health or State of Texas;

(3) is in an amount of \$100,000; and

(4) is issued by an insurance company licensed by the department.

(b) In addition, a MCO must maintain the fidelity bonds required by and comply with Article 20A.30 of the Texas Insurance Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613690

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-6327



## Part II. Texas Workers' Compensation Commission

### Chapter 110. Required Notices of Coverage

#### Subchapter B. Employer Notices

##### **28 TAC §110.108**

The Texas Workers' Compensation Commission (TWCC) proposes new rule §110.108, concerning notice to employees regarding exposure to certain communicable diseases. The new rule is proposed to provide notice to employees of requirements set out in the Texas Health and Safety Code and rules of the Texas Department of Health.

The Texas Health and Safety Code, §81.050(j) requires that, for the purpose of qualifying for workers' compensation, an employee who is employed as a law enforcement officer, a fire fighter, an emergency medical service employee or paramedic, or a correctional officer, who claims a possible work-related exposure to a reportable disease must provide the employer

with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease. The Texas Health and Safety Code, §85.116(c) provides a similar requirement for state employees who claim a possible work-related exposure to human immunodeficiency virus (HIV). Section 85.116(c) requires an employee who claims a possible work related exposure to HIV to provide his or her employer with a written statement of the date and circumstances of the exposure and document that within ten days after the date of exposure the employee had a test result that indicated an absence of HIV infection. Because these provisions of the Health and Safety Code affect the eligibility of certain employees to receive workers' compensation benefits, this new rule requires employers to inform employees of these requirements. Without such a rule, employees may not know of the requirements.

Proposed new §110.108 requires employers of emergency responders and state employers to post a notice in their personnel offices and in their workplace where affected employees are likely to see it, regarding the employer notification and testing requirements set out in the Health and Safety Code for eligibility for workers' compensation benefits. Subsection (c) of the proposed new rule requires the employer's workers' compensation carrier or the state or political subdivision employer to pay the cost of testing. The text of the notice to be posted is provided in subsection (d).

In conjunction with this proposal, the TWCC is also proposing new §122.3, which sets out the employee's reporting and testing requirements for emergency responders exposed to a reportable disease, and new §122.4, which sets out the reporting and testing requirements for state employees exposed to HIV.

Janet Chamness, Chief of Budget, has determined that for the first five-year period the proposed rule is in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rule. State employers and some local government employers will be required to obtain and post the required notice. State employers and some local government employers will be responsible for the cost of testing.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be more complete information for employees on the requirements for receipt of workers' compensation benefits and fewer denials of workers' compensation benefits for failure to comply with Health and Safety Code requirements.

There will be minimal anticipated economic costs to persons who are required to comply with the rule as proposed. Employers, including the state and political subdivisions, will be required to obtain and post the required notice and insurance carriers, state agencies, and political subdivisions will be responsible for the cost of testing. There will be no different costs of compliance for small businesses as compared to large businesses.

Comments on the proposal or requests for a public hearing must be received by 5:00 p.m. on October 31, 1996 and submitted

to Elaine Crease, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The proposed new rule affects the following statutes: the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance with Subchapter A of Chapter 406, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code, §408.007, which establishes the date of injury for occupational disease; the Texas Labor Code, §409.001, which provides the procedure for an employee to notify his or her employer of an injury; the Texas Labor Code, §409.003, which requires an employee to file a claim for compensation within one year of the injury or occupational disease; the Texas Labor Code, §411.011, which requires the Health and Safety Division of the Commission to coordinate and enforce the implementation of state laws and rules relating to workers' health and safety; the Texas Labor Code §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a state agency; the Texas Health and Safety Code §81.050(j), which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; the Texas Health and Safety Code §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV; and the Texas Government Code, §607.002, which provides that under certain circumstances a public safety employee exposed to a contagious disease is entitled to reimbursement from an employing governmental entity for reasonable medical expenses.

The new rule is proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance with Subchapter A of Chapter 406, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code, §409.006, which requires employers to maintain a record of employee injuries and authorizes the commission to adopt rules relating to the content of such records; the Texas Labor Code, §411.011, which requires the Health and Safety Division of the Commission to coordinate and enforce the implementation of state laws and rules relating to workers' health and safety; the Texas Labor Code, §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a

state agency; the Texas Health and Safety Code, §81.050(j), which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; and the Texas Health and Safety Code, §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV.

*§110.108. Employer Notice Regarding Work-Related Exposure To Communicable Disease/HIV: Posting Requirements; Payment for Tests.*

(a) Each employer covered by workers' compensation insurance, including state and political subdivision employers, which employs emergency medical service employees, paramedics, fire fighters, law enforcement officers or correctional officers must post the notice contained in subsection (d) of this section, in its workplace to inform employees about Health and Safety Code requirements which affect qualifying for workers' compensation benefits following a possible work-related exposure to a reportable communicable disease. The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis. Specific guidance for employers and employees covered by this subsection is found in §122.3 of this title (relating to Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders).

(b) Each state agency must post the notice contained in subsection (d) of this section, in its workplace to inform employees about requirements which may affect qualifying for workers' compensation benefits following a possible work-related exposure to human immunodeficiency virus (HIV). The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis. Specific guidance for state employers and employees covered by this subsection is found in §122.4 of this title (relating to State Employees: Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements).

(c) The cost of testing for exposure to a reportable communicable disease for emergency medical service employees, paramedics, fire fighters, law enforcement officers and correctional officers shall be paid by the employer's workers' compensation insurance carrier, including state and political subdivision employers.

(d) The following notice shall be printed with a title in at least 15 point bold type and the text in at least 14 point normal type, in English and Spanish or in English and any other language common to the employer's affected employee population. The text of the notice shall be as follows without any additional words or changes.  
Figure 28 TAC §110.108(d) This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas on September

20, 1996 Susan Cory General Counsel Texas Workers' Compensation Commission For further information, please call: (512) 440-3700

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on 20, 1996.

TRD-9613808

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 440-3700



## Chapter 122. Claimants

### Subchapter A. Claims Procedures for Injured Employees

#### 28 TAC §122.3, §122.4

The Texas Workers' Compensation Commission (TWCC) proposes new rules §122.3 and §122.4, which set out the reporting and testing requirements for emergency responders and state employees regarding exposure to certain communicable diseases and human immunodeficiency virus (HIV). The new rules are proposed to provide employees with information regarding the testing and reporting requirements set out in the Texas Health and Safety Code for eligibility for workers' compensation benefits.

The Texas Health and Safety Code, §81.050(j) requires that, for the purpose of qualifying for workers' compensation benefits, an employee who is employed as a law enforcement officer, a fire fighter, an emergency medical service employee or paramedic, or a correctional officer, who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease. The Texas Health and Safety Code, §85.116(c) provides a similar requirement for state employees who claim a possible work-related exposure to human immunodeficiency virus (HIV). Section 85.116(c) requires an employee who claims a possible work related exposure to HIV to provide his or her employer with a written statement of the date and circumstances of the exposure and document that within ten days after the date of exposure, the employee had a test result that indicated an absence of HIV infection. Because these provisions of the Health and Safety Code affect the eligibility of certain employees to receive workers' compensation benefits, these new rules set out the actions which must be taken by affected employees to preserve their claim for workers' compensation benefits. Without such a rule, employees may not know of the requirements.

Proposed new §122.3 applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who have a possible work-related

exposure to a reportable disease. The rule defines the term "reportable disease" and lists the communicable diseases currently designated as reportable by the Texas Department of Health. Subsection (c) states the requirement that to be eligible for workers' compensation benefits affected employees must obtain a test within ten days of the exposure to the reportable disease, and requires that the employee provide the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the employee's test results within 30 days of the receipt of the results. Subsection (d) requires the employer's workers' compensation carrier or the state or local government employer to pay for the employee's test. Subsection (e) and (f) provide employers and employees with references to other applicable statutes and rules.

Proposed new §122.4 applies to state employees who have a possible work-related exposure to HIV. Subsection (b) states the requirement that to be eligible for workers' compensation benefits, state employees must obtain a test within ten days of the exposure to HIV, and requires that the employee provide the employer with a written statement of the date and circumstances of the exposure and a copy of the employee's test results within 30 days of the receipt of the results. Subsection (c) requires the state employer to pay for the employee's test. Subsection (d) and (e) provide employers and employees with references to other applicable statutes and rules.

In conjunction with this proposal, the TWCC is also proposing new rule 110.108 which requires employers of emergency responders and state employers to post a notice in their personnel offices and in their workplace where affected employees are likely to see it, regarding the testing requirements set out in the Health and Safety Code for eligibility for workers' compensation benefits.

Janet Chamness, Chief of Budget, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rules. State employers and some local government employers will be required to obtain and post the required notice. State employers and some local government employers will be responsible for the cost of testing.

Ms. Chamness also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be more complete information for employees on the requirements for receipt of workers' compensation benefits and fewer denials of workers' compensation benefits for failure to comply with Health and Safety Code requirements.

There will be minimal anticipated economic costs to persons who are required to comply with the rules as proposed. Employers, including the state and political subdivisions, will be required to obtain and post the required notice and insurance carriers, state agencies, and political subdivisions will be responsible for the cost of testing. There will be no different costs of compliance for small businesses as compared to large businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m. on October 31, 1996 and submitted to Elaine Crease, Office of the General Counsel, Mailstop

#4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The proposed new rules affect the following statutes: the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance with Subchapter A of Chapter 406, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code, §408.007, which establishes the date of injury for occupational disease; the Texas Labor Code, §409.001, which provides the procedure for an employee to notify his or her employer of an injury; the Texas Labor Code §409.003, which requires an employee to file a claim for compensation within one year of the injury or occupational disease; the Texas Labor Code, §409.006, which requires employers to maintain a record of employee injuries and authorizes the commission to adopt rules relating to the content of such records; the Texas Labor Code, §411.011, which requires the Health and Safety Division of the Commission to coordinate and enforce the implementation of state laws and rules relating to workers' health and safety; the Texas Labor Code, §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a state agency; the Texas Health and Safety Code §81.050(j), which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; the Texas Health and Safety Code, §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV.

The new rules are proposed under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance with Subchapter A of Chapter 409, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code, §409.006, which requires employers to maintain a record of employee injuries and authorizes the commission to adopt rules relating to the content of such records; the Texas Labor Code, §411.011, which requires the Health and Safety Division of the Commission to coordinate and enforce the implementation of state laws and rules relating to workers' health and safety; the Texas Labor Code, §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a state agency; the Texas Health and Safety Code, §81.050(j),

which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; the Texas Health and Safety Code, §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV; and the Texas Government Code, §607.002, which provides that under certain circumstances, a public employee exposed to a contagious disease is entitled to reimbursement from an employing governmental entity for reasonable medical expenses.

*§122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders.*

(a) This section applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who are state employees or employees covered under workers' compensation insurance.

(b) For purposes of this section "reportable disease" means communicable diseases and health conditions required to be reported to the Texas Department of Health by the Texas Health and Safety Code, §81.041, as amended, including: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; Chlamydia trachomatis infection; cholera; dengue; diphtheria; encephalitis; Escherichia coli 0157:H7; gonorrhea; Hansen's disease (leprosy); Hemophilus influenzae infections, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis, acute viral; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (Rubeola); meningitis; meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus; trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; vibrio infection; viral hemorrhagic fevers; and yellow fever. This list of diseases may change from time to time. To determine the most current list of reportable diseases refer to Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases.

(c) An employee listed in subsection (a) of this section will not be entitled to workers' compensation benefits for a reportable disease unless the employee:

(1) had a test performed within ten days of an exposure to the reportable disease that indicated the absence of the reportable disease (Exposure criteria and testing protocol must conform to Texas Department of Health requirements.); and

(2) provided the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the results of

the test required by subsection (c)(1) of this section within 30 days of receipt of the test results.

(d) The employer's insurance carrier, including state and political subdivision employers, shall be liable for the costs of test(s) required by subsection (c) of this section, regardless of the results of the test(s), in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules. The cost of a state employee's testing, regardless of the results of the test, shall be paid from funds appropriated for payment of workers' compensation benefits to state employees.

(e) Section 110.108 of this title (relating to Employer Notice Regarding Work-Related Exposure to Communicable Diseases/ HIV: Posting Requirements; Payment for Tests) requires each employer with employees covered by this section to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.

(f) Emergency responders and employers of emergency responders should also refer to the Texas Health and Safety Code Chapter 81 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases to ensure compliance with all applicable requirements.

*§122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.*

(a) This section applies to all employees of the state of Texas.

(b) A state employee shall not be entitled to workers' compensation benefits for a work-related exposure to human immunodeficiency virus (HIV) infection unless the employee:

(1) had a test performed within 10 days of an exposure to HIV that indicated the absence of HIV infection (Exposure criteria and testing protocol must conform to Texas Department of Health requirements.); and

(2) provided the employer with a written statement of the date and circumstances of the exposure to HIV and a copy of the results of the test required by subsection (b)(1) of this section within 30 days of receipt of the test results.

(c) The cost of a state employee's test(s) required by subsection (b) of this section, regardless of the results of the test(s), shall be paid from funds appropriated for payment of workers' compensation benefits to state employees, in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules.

(d) Section 110.108 of this title (relating to Employer Notice Regarding Work Related Exposure to Communicable Disease/ HIV: Posting Requirements; Payment for Tests) requires each state agency to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section. State employees who are also emergency responders and state employers of emergency responders should also refer to §122.3 of this title (relating to Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders).

(e) State employers and state employees should also refer to the Texas Health and Safety Code Chapter 85 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases to ensure compliance with all applicable requirements. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in

Austin, Texas on September 20, 1996 Susan Cory General Counsel  
Texas Workers' Compensation Commission For further information,  
please call: (512) 440-3700

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on 20, 1996.

TRD-9613809

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 440-3700



## Chapter 133. General Medical Provisions

### Subchapter C. Second Opinions for Spinal Surgery

#### 28 TAC §133.206

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §133.206, concerning the spinal surgery second opinion process.

Section 133.206 describes the process by which a carrier becomes liable for the costs of spinal surgery. The rule sets out procedures and liability for costs of a second-opinion examination and sets the fee for second opinions. The rule also sets qualifications for doctors to perform second opinions on spinal surgery and requires the commission to maintain a list of spinal surgeons and to provide sublists of five qualified doctors from which a second opinion doctor may be chosen by the injured employee and the carrier. A doctor must be on the spinal surgery list to be reimbursed by the carrier for spinal surgery. The commission's Medical Review division is given the authority to issue orders requiring timely submission of doctor's reports, to refer for administrative violation a doctor who fails to comply with the rule or an order, and to refer a doctor to the commissioners for removal from the Approved Doctor List. The rule sets out actions which may result in division action to suspend or commission action to remove a doctor from the spinal surgeon list. In addition, the rule sets out the procedure for a doctor who has been suspended to request a hearing to contest the suspension.

Subsection (l) is proposed to be amended to clarify the process for reconsideration of an earlier nonconcurrence with a recommendation for spinal surgery. The proposed change to subsection (l)(1) clarifies that a treating doctor or surgeon who believes that a change in an injured worker's condition has occurred and desires a reevaluation of a nonconcurrence with a recommendation for spinal surgery may submit documentation of such changed condition to the Commission's Medical Review Division. The Medical Review Division will review the documentation to determine if there is evidence of a change in the injured worker's condition. If the Medical Review Division determines the documentation does indicate a change of condition as defined by the rule, the treating doctor or surgeon shall submit

the documentation to both second opinion doctors for reevaluation. Proposed subsection (a)(16) has been added to provide a definition of "change of condition" as a documented worsening of condition, new or updated diagnostic test results providing further evidence of the condition, or follow up of treatment recommendations outlined by a second opinion doctor. To clarify that the treating doctor or surgeon should not submit documentation to a second opinion doctor prior to the Medical Review Division's determination that a change of condition exists, subsection (l)(3) has been added.

The proposed changes to the rule do not alter the basic process currently set out in the rule regarding submission of documentation of change of condition. The changes are proposed to eliminate any existing confusion regarding the process and to prevent second opinion doctors from receiving (and being required to issue addendum reports based on) documents which do not indicate any change of condition.

It is proposed that subsection (m) be amended to change the expiration date of the rule from January 1, 1997 to January 1, 1998. This change of the expiration date is proposed because the rule has proven to be an effective tool in maintaining cost effective, quality care for spinal injuries and without this amendment the rule will automatically expire on January 1, 1997. By changing the expiration date to January 1, 1998, the Commission will be required to review and reevaluate the rule for it to continue in effect.

Janet Chamness, Chief of Budget, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rule. The Commission will not incur additional costs, because the Medical Review Division currently must expend considerable time reviewing documentation of changed condition and this rule merely clarifies an existing process.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be to provide a clear efficient procedure for consideration of evidence of change of condition. Second opinion doctors will avoid time consuming drafting of addendum reports when documentation does not indicate a change of the injured worker's condition.

There will be no difference in anticipated costs of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments or requests for public hearing must be received by 5:00 p.m. on October 31, 1996, and must be submitted to Elaine Crease, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. The Commission also encourages the public to submit observations and suggestions regarding aspects of §133.206 for which amendments are not currently proposed, to the Commission's Medical Review Division, Spinal Surgery Section, MS- 42, Texas Workers' Compensation Commission, 4000 South IH35, Austin, Texas 78704, for review and analysis.

The proposed amendment to §133.206 affects the following statutes: the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act;

the Texas Labor Code, §402.072, which mandates that only the commission can impose sanctions which deprive a person of the right to practice before the commission, receive remuneration in the workers' compensation system, or revoke a license, certification or permit required for practice in the system; the Texas Labor Code, §402.073, as amended by House Bill 1089, 74th Legislature, 1995, which requires the Texas Workers' Compensation Commission and the State Office of Administrative Hearings to cooperate in establishing procedures for holding hearings; the Texas Labor Code, §408.022, which requires an employee receiving treatment under the workers' compensation system to choose a doctor from a list of doctors approved by the commission and establishes the extent of an employee's option to select an alternate doctor; the Texas Labor Code, §408.023, as amended by House Bill 1089, 74th Legislature, 1995, which establishes which doctors are placed on the approved list of doctors and mandates that the commission establish rules for deleting and reinstating doctors to the list; the Texas Labor Code, §408.026, which establishes when a carrier is liable for costs relating to spinal surgery and mandates that the commission adopt rules necessary to effectuate the statute; the Texas Labor Code, §413.007, which prescribes certain statewide data which must be maintained by the Medical Review division; the Texas Labor Code, §413.011, which mandates that the commission by rules establish medical policies and guidelines; the Texas Labor Code, §415.003, as amended by House Bill 1089, 74th Legislature, 1995, which lists actions or inactions which constitute an administrative violation by a health care provider; the Texas Labor Code, §415.034, as amended by House Bill 1089, 74th Legislature, 1995, which allows a party charged with an administrative violation or the Executive Director of the commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, Title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §408.026, which establishes when a carrier is liable for costs relating to spinal surgery and mandates that the commission adopt rules necessary to effectuate the statute; the Texas Labor Code, §415.034, as amended by House Bill 1089, 74th Legislature, 1995, which allows a party charged with an administrative violation or the Executive Director of the commission to request a hearing with the State Office of Administrative Hearings; and the Texas Government Code, §2003.021(c), which requires the State Office of Administrative Hearings to conduct hearings under the Texas Labor Code, title 5, in accordance with the applicable substantive rules and policies of the Texas Workers' Compensation Commission.

*§133.206. Spinal Surgery Second Opinion Process.*

(a) Definitions. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1)-(15) (No changes.)

**(16) Change of condition-A documented worsening of condition, new or updated diagnostic test results providing further evidence of the condition, or follow up of treatment recommendations outlined by a second opinion doctor.**

(b)-(k) Carrier Liability for Spinal Surgery Costs.

(l) Resubmitting the Issue of Spinal Surgery.

(1) If the injured employee has a change of condition at any time after a nonconcurrency, the treating doctor or surgeon may submit a TWCC-63 to the division with documentation indicating the change of condition as defined in section (a)(16) of this section. The division will review the documentation for the purpose of evaluating the presence of criteria listed in section (a)(16) of this section prior to submission to or reevaluation by a second opinion doctor. If the division agrees that conditions of section (a)(16) of this section exist, the medical records and films which indicate and support the existence of a change of condition [to] shall be submitted by the treating doctor or surgeon to [the] both second opinion doctors for reconsideration. The second opinion doctors shall issue an addendum to the original decision and send a copy to the division, the treating doctor, the surgeon, and the carrier with the word "ADDENDUM" clearly indicated on the narrative report. Addendum decisions, reports, records, and payments, and appeal to a CCH are governed by all of the provisions of this section. If the addendum second opinions result in carrier liability, any pending appeal shall be dismissed.

(2) (No changes.)

(3) [A recommendation for spinal surgery may be resubmitted at any time after the final appeal upholds the nonconcurrency. The reason for resubmission must be indicated on a TWCC-63 in the form and manner prescribed by the division.] **The treating doctor or surgeon shall not contact a second opinion doctor for the purpose of reconsidering a second opinion without first obtaining a determination from the division that the documentation indicates a change of condition.**

(m) This section [will become effective and] affects all Form TWCC-63's filed with the commission on or after November 1, 1994, and [remain] **remains** effective until January 1, [1997] **1998**. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas on September 20, 1996 Susan Cory General Counsel Texas Workers' Compensation Commission For further information, please call: (512) 440-3700

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on 20, 1996.

TRD-9613810

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 440-3700



# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 57. Fisheries

The Texas Parks and Wildlife Department proposes repeal of §§57.371 and §§57.374-57.375, and new §§57.374-57.375, concerning Commercially Protected Finfish. This action represents a recodification and streamlining of existing rules in accordance with the Parks and Wildlife Commission regulations sunset process.

Proposed new §57.374, concerning Delegation of Authority, delegates authority to the Executive Director for prescribing the format for invoice and label information. Proposed new §57.375, concerning Exclusive Economic Zone Regulations, sets regulations for transport and unloading of commercially protected finfish taken or raised in the EEZ.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rules as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rules as proposed are in effect the public benefit anticipated of these actions will be removal of redundant sections of the Texas Administrative Code and streamlining of regulations concerning commercially protected finfish.

There will be no effect on small businesses. There are no anticipated economic cost to persons required to comply with the new rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code §2001.022, as this agency has determined that the repeal and new rules as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Jack King, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4630 or 1-800-792-1112, ext. 4630

### Commercially Protected Finfish

#### 31 TAC §§57.371, 57.374, 57.375

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Parks and Wildlife Code, §66.020.

The proposed repeals affect Parks and Wildlife Code, §66.020.

§57.371. *Commercially Protected Finfish.*

§57.374. *Delegation of Authority.*

§57.375. *Exclusive Economic Zone Regulations.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613710

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642

#### 31 TAC §57.374, §57.375

The new rules are proposed under Parks and Wildlife Code, §66.020.

The proposed new rules affect Parks and Wildlife Code, §66.020.

§57.374. *Delegation of Authority.*

Authority is hereby delegated to the executive director to change or prescribe the format in which invoice and label information are to be submitted to the department and to require additional information.

§57.375. *Exclusive Economic Zone Regulations.*

A commercially protected finfish lawfully taken or raised for commercial purposes in the exclusive economic zone (EEZ) under the authority of a federal fishery management plan or federal permit may be transported into this state by the harvesting vessel. These commercially protected finfish may only be unloaded to the holder of a Texas finfish import license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613699

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642

### Marking of Vehicles

#### 31 TAC §57.500

The Texas Parks and Wildlife Department proposes repeal of §57.500 and new §57.500, concerning Marking of Vehicles. This action represents a recodification of existing rules in accordance with the Parks and Wildlife Commission regulations sunset process.

Proposed new §57.500 provides requirements for marking of motor vehicles, trailers or semitrailers transporting fish for commercial purposes. Proposed marking requirements represent no change from current marking requirements.



Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rule as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rule as proposed are in effect the public benefit anticipated as a result of the repeal and new rule as proposed will be consistency of regulations concerning marking of vehicles.

There will be no effect on small businesses. There are no anticipated economic cost to persons required to comply with the new rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code §2001.022, as this agency has determined that the repeal and new rule as proposed will not impact local economies.

Comments on the proposed repeal and new rule may be submitted to Jack King, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4630 or 1-800-792-1112, ext. 4630

*(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Parks and Wildlife Code, §66.014.

The proposed repeal affects Parks and Wildlife Code, §66.014.

*§57.500. Marking of Vehicles.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613700

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



The new rule is proposed under Parks and Wildlife Code, §66.014.

The proposed new rule affects Parks and Wildlife Code, §66.014.

*§57.500. Marking of Vehicles.*

(a) All motor vehicles, trailers, or semitrailers transporting fish for commercial purposes shall exhibit the inscription "fish" on the rear of the vehicle. The inscription shall read from left to right and shall be plainly visible at all times while transporting fish. The inscription "fish" shall be attached to or painted on the vehicle, trailer, or semitrailer in block arabic letters of good proportion in contrasting color to the background and be at least six inches in height.

(b) Motor vehicles, trailers, or semitrailers transporting fish for commercial purposes shall exhibit a single decal on the lower left rear portion of the vehicle. The decal shall be in the form designated in this proclamation and be at least six inches square with an image of the State of Texas, white in color against a dark background in contrasting color to the vehicle or trailer. The decal shall be plainly visible at all times while transporting fish.

Figure: 31 TAC §57.500(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613701

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



## Artificial Reef Fishery Management Plan

### 31 TAC §57.691

The Texas Parks and Wildlife Department proposes repeal of §57.691, concerning Artificial Reef Fishery Management Plan and new §57.691, concerning Fishery Management Plans. This action represents a recodification of existing rules in accordance with the Parks and Wildlife Commission regulations sunset process.

Proposed new §57.691 will combine existing §57.691, concerning Texas Artificial Reef Fishery Management Plan and existing §57.701, concerning Texas Blue Crab Fishery Management Plan into a single section. The new section also provides information necessary for users to obtain copies of these plans.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rule as proposed are in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rule as proposed are in effect the public benefit anticipated as a result of the repeal and new rule as proposed will be streamlining of regulations concerning artificial reef and blue crab fishery management plans.

There will be no effect on small businesses. There anticipated no economic cost to persons required to comply with the new rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code §2001.022, as this agency has determined that the repeal and new rule as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road,

Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112, ext. 4650

*(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Parks and Wildlife Code, §89.021.

The proposed repeal affects Parks and Wildlife Code, §89.021.

*§57.691. Artificial Reef Fishery Management Plan.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613702

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



## Fishery Management Plans

### 31 TAC §57.691

The new rule is proposed under Parks and Wildlife Code, §89.021, which directs the Department to establish an artificial reef fishery management plan, and §66.018, which provides authority to the Parks and Wildlife Commission to make promulgate regarding trapping of blue crabs.

The proposed new rule affects Parks and Wildlife Code, §89.021 and §66.018.

*§57.691. Fishery Management Plans.*

(a) The Texas Artificial Reef Fishery Management Plan and source document are incorporated by reference.

(b) The Texas Blue Crab Fishery Management Plan is incorporated by reference.

(c) Copies of these plans may be obtained at the Texas Parks and Wildlife Department Headquarters at 4200 Smith School Road, Austin, Texas 78744.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613703

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



## Blue Crab Fishery Management Plan

### 31 TAC §57.701

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Parks and Wildlife Department proposes repeal of §57.701, concerning Blue Crab Fishery Management Plan. This action represents a recodification of existing rules in accordance with the Parks and Wildlife Commission regulations sunset process.

Existing §57.701, concerning Texas Blue Crab Fishery Management Plan will be combined with existing §57.691, concerning Artificial Reef Fishery Management Plan into a single section.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal as proposed is in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of the repeal is removal of unnecessary sections of the Texas Administrative Code.

There will be no effect on small businesses. There anticipated no economic cost to persons required to comply with the repeal as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the repeal as proposed will not impact local economies.

Comments on the proposed repeal may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112, ext. 4650

The repeal is proposed under Parks and Wildlife Code, §66.018.

The proposed repeal affects Parks and Wildlife Code, §66.018.

*§57.701. Texas Blue Crab Fishery Management Plan.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613704

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



## Chapter 59. Parks

The Texas Parks and Wildlife Department proposes repeal of §59.61-59.64 and new §59.61-59.64, concerning Administration

of the State Park System. This action represents recodification of sections of the Texas Administrative Code as part of the Commission's regulations sunset process.

Proposed new §59.61, concerning General Objectives, outlines the purpose and scope of the Department public lands and the Commission objectives in management of those lands. New §59.62, concerning Parks and Wildlife Land Classification-Policy, sets the Commission policy on how Department Public Lands are to be classified. Proposed new §59.63, concerning Definitions, provides definitions necessary for clarification and implementation of other sections. Proposed new §59.64 puts into place classification of public lands and guidelines for classification.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rules as proposed are in effect, there will be no additional fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rules as proposed are in effect the public benefit anticipated as a result of the repeal and new rules as proposed will efficient administration and classification of public lands under the control of the Parks and Wildlife Department.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal of rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the repealed rules as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Mike Herring, Land Conservation Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4520 or 1-800-792-1112, ext. 4520.

## Administration of the State Park System

### 31 TAC §§59.61-59.64

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Parks and Wildlife Code, §13.001 directs the Commission to establish a classification system for public lands.

The proposed repeal of rules affects Parks and Wildlife Code, §13.001.

*§59.61. General Objectives.*

*§59.62. Parks and Wildlife Land Classification-Policy.*

*§59.63. Definitions.*

*§59.64. Classification and Guidelines.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613705

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



The new rules are proposed under Parks and Wildlife Code, §13.001, which directs the Commission to establish a classification system for public lands.

The proposed new rules affect Parks and Wildlife Code, §13.001.

*§59.61. General Objectives.*

In guiding the purpose and scope of the Texas Parks and Wildlife Department public lands, the objectives of the Texas Parks and Wildlife Commission are:

(1) to seek out and protect through education, cooperative agreements, partnerships, conservation easements, and acquisition high quality examples of the State's natural and cultural heritage, and sensitive habitats or resources;

(2) to provide opportunities for resource based outdoor recreation;

(3) to impart to the people of Texas an understanding and appreciation of the State's cultural, historical and natural heritage;

(4) to promote environmental education, research, and demonstration of the stewardship of the State's diverse natural and cultural resources;

(5) to join with all the citizenry of this and other states and nations in promoting the conservation of natural, historical and recreational resources.

*§59.62. Parks and Wildlife Land Classification-Policy.*

It is the policy of the Parks and Wildlife Commission that:

(1) The executive director is authorized to implement the following classification and guidelines for existing and future lands owned or leased by Texas Parks and Wildlife Department, except coastal preserves, scientific areas, fish hatcheries, boat ramps and administrative properties. Initial classification and subsequent classification changes shall be subject to Texas Parks and Wildlife Commission review and approval.

(2) Classification of departmental lands under this system will not affect existing site names, naming policy, on-site signage or literature unless a new category so changes uses that it is misleading. Multiple classifications may occur within individual sites and the use of a specific name may be for convenience or to indicate a primary classification without precluding uses set forth under other classification categories.

(3) The use and management of individual units of Department lands will be addressed on a site specific basis, in accordance with the classification system, as management plans are developed and refined with opportunity for appropriate public input. Management plans shall optimize opportunities for public hunting and other public uses when appropriate on all Department lands.

(4) Prior to classification or formal approval of individual site management plans for specific public lands, provision for public use shall be made in accordance with sound biological management, taking into consideration past patterns of use, and existing rules and regulations.

(5) In interpreting this title, the serial designation of topics under a heading is not intended to denote a priority order or a preference. Furthermore, the term "may" is intended to be permissive and authorize discretion, the term "should" is intended to be directory and identify a preference when no other constraining conditions are applicable, and the term "shall" is intended to be mandatory and require the prescribed action or decision. In all such cases, all applicable antecedent conditions are prerequisites to a final action or decision.

*§59.63. Definitions.*

The following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise.

**Ecoregion** –One of the ecological regions or subregions of Texas, based on the primary vegetational types, as broadly defined by:

(A) Schuster J.L. and S.L. Hatch. 1990. Texas Plants—An Ecological Summary in: Checklist of the Vascular Plants of Texas. S.L. Hatch, K.N. Gandhi, and L.E. Brown. MP-1655. TAES, TAMU, College Station, Texas; or

(B) L.B.J. School of Public Affairs. 1978. Preserving Texas' Natural Heritage. L.B.J. School of Public Affairs, University of Texas, Austin, Texas; or

(C) Gould, F.W. 1962. Texas Plants—A Checklist and Ecological Summary. MP-585. TAEX Bulletin, TAMU, College Station, Texas. 112pp.

**Low Impact Public Use** –Use or development of a specific site to minimize long term irreversible impact.

**Management plan** –A document that sets forth the framework for resource stewardship, conservation, public use, facility maintenance, operations and public safety for a specific unit (or subunit) of Parks and Wildlife lands.

**Natural biodiversity** –The complement of plants and animals that is expected to occur on an ecological site type, in natural communities or over a landscape.

**Natural communities** –An assemblage of organisms indigenous to an area which is characterized by a distinct combination of species occupying common ecological zones and interacting with one another. An array of plants and animals expected for any given ecological site type.

**Public Hunting** –Hunting by the public of wildlife, including feral and exotic species on departmental controlled lands as authorized by the Commission under the Public Hunting Lands Hunting and Fishing Proclamation.

**Public Use** –Resource oriented recreation or other site appropriate uses, which may include bicycle riding, birdwatching, boating, camping, canoeing, driving and walking nature trails, field trials, fishing, hiking, horseback riding, hunting, nature study, photography, rock climbing, swimming, wildlife viewing, or other appropriate activities.

**Resource Oriented Recreation** –Recreational activities the enjoyment of which is dependent upon or enhanced by a natural resource.

**Sound Biological Management** –The use of the best information available to the Texas Parks and Wildlife Department in setting living resources management goals and determining the techniques to be used in achieving those goals.

**Sustainability** –The capability of natural and cultural systems to maintain themselves over time as defined by site specific management goals.

**Wilderness Type Experience** –Recreational activities intended to provide the user the wilderness associated benefits of open space, solitude, and few man-made intrusions, in a natural setting.

*§59.64. Classification and Guidelines.*

(a) **Classification. Game Management Areas.** Game Management Areas are areas dedicated to wildlife management, research, demonstration, and appropriate public use.

(1) **Selection.**

(A) Game Management Areas should be areas possessing significant or potentially significant habitat values for the management and protection of wildlife and natural resources.

(B) Game Management Areas should be of sufficient size to provide opportunity for research and management of the wildlife and natural resources.

(C) Game Management Areas should be located to be representative of an ecoregion, or to meet priority wildlife habitat needs, or to provide education, hunting and other appropriate outdoor recreational opportunities for the public.

(2) **Development.**

(A) Facilities and supporting developments on Game Management Areas should be located and designed to minimize disturbance to natural and cultural resources.

(B) Long-term major facility development should be limited to selected Game Management Areas identified for their research, education, demonstration and public use values.

(C) Development of appropriate recreational facilities on Game Management Areas should be provided when there is a demonstrated demand.

(D) Capital improvements on Game Management Areas should provide the opportunity to enhance habitats and conditions for wildlife populations, demonstrate integrated agricultural practices beneficial to wildlife and their habitats, and provide access for appropriate public use.

(3) **Operation.**

(A) Game Management Areas should be operated to provide opportunities for the research, education and/or demonstration of effective wildlife habitat management practices.

(B) Game Management Areas may be operated to provide opportunities for outdoor classroom and other interpretive effort.

(4) **Use.**

(A) Game Management Areas may provide public hunting opportunity, when such use is not detrimental to the primary

goals and management of the area and sound biological management, location, physical conditions, safety and other uses permit.

(B) Game Management Areas may provide other appropriate resource oriented recreation primarily through low impact public use, when such use is not detrimental to the long term stewardship and conservation of the natural and cultural resources as identified in the site management plan and as other uses permit.

(5) Management.

(A) Game Management Areas should be managed to maintain or enhance wildlife habitat and populations as such management is consistent with the site management plan.

(B) Game Management Areas should be managed for the research, education and demonstration of effective wildlife habitat management practices.

(C) Game Management Areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(b) Classification: Recreational Areas. Recreational Areas are areas of natural or scenic character, often containing historical, archeological, ecological, or geological values selectively developed to provide resource- oriented recreational opportunities.

(1) Selection.

(A) Recreational Areas should be areas possessing natural or scenic values, that are adaptable to both active and passive recreational development and use;

(B) Recreational Areas should be located to help meet the priority recreational needs of Texans, or where outstanding natural values of statewide significance create a substantial recreation demand; and

(C) Recreational Areas should provide recreational opportunities capable of attracting significant visitation on a regional or statewide basis.

(D) New acquisitions should normally include a minimum of 500 acres of land, but may include less in the case of an extraordinary recreational resource of statewide significance.

(2) Development.

(A) Recreational Areas should be developed to optimize recreational opportunities afforded by the site and to provide for a variety of facilities and activities while retaining the character of the natural setting.

(B) Intensity of development of a Recreational Area should provide for the sustainability of the resource and should generally not exceed a ratio of one developed acre to four undeveloped acres.

(C) Recreation facilities and supporting developments should be located and designed to minimize disturbance to natural and cultural resources.

(3) Operation.

(A) Visitor information and interpretive programs should be emphasized to provide the visitor with a more complete and meaningful recreational experience.

(B) Recreational Areas should be operated in an economically efficient manner, striving toward self- sufficiency, while not compromising the natural or cultural resources or the enjoyment thereof.

(4) Use.

(A) Recreational Areas should provide for a variety of resource oriented recreation and public uses not detrimental to the long term stewardship and conservation of the natural and cultural resources as identified in the site management plan.

(B) Recreational Areas may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area, and sound biological management, location, physical conditions, safety and other uses permit.

(5) Management.

(A) Resources within Recreational Areas should be managed to provide the opportunity for a quality recreational experience while maintaining the natural, cultural and scenic features of the park.

(B) Habitat management should emphasize maintenance and restoration of natural communities, and natural biodiversity.

(C) Recreational Areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(c) Classification: Natural Areas. Natural Areas are areas established for the protection and stewardship of outstanding natural attributes of statewide significance, which may be used in a sustainable manner for scientific research, education, aesthetic enjoyment, and appropriate public use not detrimental to the primary purposes.

(1) Selection.

(A) Natural areas should encompass examples of natural scenic beauty, natural communities, biological features, sensitive areas, or geological formations of statewide significance, or possess exceptional educational or scientific values.

(B) Natural areas should be large enough to protect the integrity of the features being protected, with adequate buffers to provide for public access and resource protection, and where feasible, include sufficient area to provide for a wilderness-type experience.

(C) New acquisitions should be selected on a priority basis determined by statewide significance, natural condition, and the degree to which the resource is threatened.

(D) Natural areas which duplicate the primary significance of a site presently preserved in public ownership will receive a lower priority for acquisition than those types of areas currently unrepresented in the public domain.

(2) Development.

(A) Development in Natural Areas should be low-density in nature and limited to that appropriate for adequate control and sustainability of the resource, and for visitor access.

(B) Recreational development should be provided only where it facilitates additional appreciation of the unique resource and should not be detrimental to the natural environment nor encroach upon, damage or impair the scenic or natural features concerned.

(3) Operation.

(A) Natural Areas should be operated in an economically efficient manner, emphasizing resource protection over public use and revenue generation.

(B) Visitor information and interpretation should be emphasized in Natural Areas to increase the visitor's understanding and appreciation of the resource being preserved.

(4) Use.

(A) Natural Areas should accommodate low impact, resource oriented recreation, not detrimental to the continued preservation and stewardship of the natural and cultural features as outlined in the site management plan.

(B) Natural Areas may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other uses permit.

(5) Management.

(A) Natural Areas should be managed, consistent with the site management plan, to insure the protection and perpetuation of the scenic or outstanding natural features.

(B) Habitat management should emphasize maintenance or restoration of natural communities and natural biodiversity, consistent with the primary goals of the area.

(C) Natural areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(d) Classification: Historical Areas. Historical areas are areas established for the preservation, interpretation and public use of prehistoric and historic resources of statewide or national significance.

(1) Selection.

(A) Historical Areas should have a significant association with the broad history of the State as defined in the Texas Historic Sites and Structures Act, Texas Civil Statutes, Article 6081s.

(B) The detailed selection criteria set out in the Historic Sites and Restoration Program Policy Statement, Section III, Acquisition Guidelines, as adopted by the Parks and Wildlife Commission, will serve as the guiding policy for selection of Historical Areas.

(2) Development.

(A) Development of recreational features should only be provided when there is a demonstrated demand for these facilities and/or when they facilitate additional appreciation of the historic resource, and where such facilities and activities are not detrimental to the overall historical program of the area, and the natural environment.

(B) The intensity of recreational development should be within the carrying capacity of the resource, and facility design and

construction materials should be tasteful and when feasible consistent with the character of the historical feature.

(3) Operation.

(A) All preservation, interpretation, representation, restoration, and/or reconstruction activities should be in accord with documented historical, archeological and architectural information.

(B) The historical integrity of an Historical Area should be preserved, and encroachments from conflicting uses or facilities should be avoided. Original material and design intent should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience.

(C) Interpretation of Historical Areas should reflect the overall statewide historical significance of the area.

(4) Use.

(A) Historical Areas should provide for resource oriented recreation or public uses that are not detrimental to the long term stewardship of the cultural and natural resources.

(B) Historical Areas may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other public uses permit.

(5) Management.

(A) Historical Areas should be managed to insure the continued conservation of significant cultural features.

(B) When natural resources are a significant component of an Historical Area, habitat management should emphasize maintenance and restoration of natural communities, and natural biodiversity, consistent with the primary goals of the area.

(C) Historical Areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613706

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



## Relocation Assistance in Park Acquisition Projects

### 31 TAC §§59.191-59.193

The Texas Parks and Wildlife Department proposes repeal of §§59.191-59.193 and new §§59.191-59.193, concerning Relocation Assistance in Park Acquisition Projects. This action represents simplification and recodification of sections of the Texas

Administrative Code as part of the Commission's regulations sunset process.

Proposed new §59.191 provides definitions necessary to clarify persons eligible for relocation assistance. New §59.192 establishes Parks and Wildlife Commission Authority to determine eligibility for relocation assistance. New §59.193 provides procedures and guidance if relocation assistance is approved by the Commission.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal and new rules as proposed are in effect, there will be no additional fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal and new rules as proposed are in effect the public benefit anticipated as a result of the repeal and new rules as proposed will be removal of unnecessary sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal and new rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the repealed and new rules as proposed will not impact local economies.

Comments on the proposed repeal and new rules may be submitted to Jim Riggs, State Parks Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4904 or 1-800-792-1112, ext. 4904.

*(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal of rules are proposed under §21.046, Property Code.

The repeal of rules affects property Code, §21.046.

*§51.191. Definitions.*

*§51.192. Purpose.*

*§51.193. Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



The new rules are proposed under §21.046, Property Code.

The proposed new rules affect Property Code, §21.046.

*§59.191. Definitions.*

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

Displaced person -A person occupying land under consideration for acquisition for park purposes on the date the department makes the first personal contact with the owner of the property, or his designated representative, when the price for the property to be acquired is discussed.

Initiation of negotiations for the parcel -The first personal contact with the owner of the property, or his designated representative, when the price for the property to be acquired is discussed.

Person -An individual, partnership, corporation, or association.

*§59.192. Purpose.*

The Texas Parks and Wildlife Commission will determine, on an individual basis, whether to provide relocation assistance to a person occupying land being acquired for park purposes for which there is no federal funding.

*§59.193. Procedures.*

(a) When relocation assistance is approved by the commission:

(1) the head of the household or the owner being displaced shall be contacted personally by a representative of the department, or a representative of an agency with which the department has contracted to fulfill its responsibilities, to explain the program; and

(2) a displaced person shall be assisted in locating and obtaining housing comparable to that being occupied and that which is being acquired by the state; in any event such housing shall be safe, decent, and sanitary. Such housing will be open to all persons, regardless of race, color, religion, sex, or national origin.

(b) When relocation assistance is approved by the commission, it will:

(1) be available to individuals, families, businesses, farmers, ranchers, and nonprofit organizations displaced as the result of a park acquisition project;

(2) apply to tenants as well as owners occupying property acquired for park purposes; and

(3) not be provided unless the property is subsequently purchased by the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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TRD-9613708

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642



Expiration Provision

### 31 TAC §59.301

*(Editor's Note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Parks and Wildlife Department proposes repeal of §59.301, concerning Expiration Provisions. Relevant sections of 31 TAC Chapter 59, Parks, will have been considered by the Parks and Wildlife Commission prior to the December 31, 1996 expiration date for sections within this chapter. These actions render this section redundant.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal as proposed is in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of the repeal as proposed will be removal of redundant sections of the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the repeal as proposed will not impact local economies.

Comments on the proposed repeal may be submitted to Dr. Bill Harvey, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, ext. 4642.

The repeal is proposed under authority of Parks and Wildlife Code, §11.011, §11.035, §13.002, §13.005, §13.015, §13.101-13.110, §§13.301-13.313, §21.001-21.111, and §§62.061-62.069.

The proposed repeal affects Parks and Wildlife Code §11.011, §11.035, §13.002, §13.005, §13.015, §13.101-13.110, §§13.301-13.313, §21.001-21.111, and §§62.061-62.069.

*§59.301. Expiration Provision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613709

William D. Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 1, 1996

For further information, please call: 1-800-792-1112, ext. 4642 or (512) 389-4642

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

## Chapter 3. Tax Administration

### Subchapter F. Motor Vehicle Sales Tax

#### 34 TAC §3.72, §3.89

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.72 and §3.89, concerning farm trailers and sales of house trailers. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.72 and §3.89 will be included the new § 3.72, concerning trailers.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the rules are in effect there will be no cost or benefit to the public from the repeal of these rules. The rules are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implements Tax Code, §111.002.

*§3.72. Farm Trailers.*

*§3.89. Sales of House Trailers.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613786

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062

#### 34 TAC §3.72

The Comptroller of Public Accounts proposes new §3.72, concerning trailers. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining



information. Therefore, current § 3.72 is being proposed for repeal. The new section consolidates the substance of the current § 3.72, concerning farm trailers, with the substance of § 3.89, concerning sales of house trailers. A definition of trailer has been added that includes farm trailers and units previously defined as house trailers. Units such as stingers and converter gears previously were added to the definition of motor vehicle by the Legislature are also included in this definition.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the new rule.

Mr. Reissig also has 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 in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §152.001 and §152.091.

### §3.72. Trailers.

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

(1) Bunkhouse - A house trailer designed to be used as a sleeping place for a group or crew but not as a single family residence.

(2) Farm or ranch - One or more tracts of land used to produce crops, livestock, or other agricultural products to be sold in the regular course of business. Farm or ranch also includes a dairy farm, commercial orchard, commercial greenhouse, feedlot, and any similar commercial agricultural operation that is an original producer of agricultural products. Home gardens or timber operations are not considered farms or ranches.

(3) Farm trailer - A trailer or semitrailer designed and used primarily as a farm or ranch vehicle.

(4) House trailer - A trailer designed for human habitation.

(5) Installation or set-up charges - Include charges for spotting, placing, leveling, blocking, anchoring, and connecting electricity, plumbing, and other utilities, and may include a charge for installing underskirting, awnings, and steps.

(6) Its own structure - The trailer is built on a permanent chassis with wheels, axles and a towing device.

(7) Mobile office - A trailer designed to be used as an office, sales outlet, or work place.

(8) Trailer - A vehicle without automotive power designed for human habitation or for carrying property upon its own structure and to be drawn by a self-propelled motor vehicle. Included in this definition are semitrailers, bunkhouses, dollies, jeeps, stingers, auxiliary axles, converter gears, travel trailers, park models, and house trailers. This definition does not include mobile offices, manufactured housing as defined in the Texas Manufactured Housing Standards Act (Texas Civil Statutes, Article 5221f), or portable buildings and prefabricated buildings as defined in §3.306 of this title (relating to Sales of Portable Buildings, Prefabricated Buildings, and Readybuilt Homes).

(9) Travel trailer or park model - A house trailer designed to be used as a dwelling and that is less than eight body feet in width and 40 body feet in length in the traveling mode and less than 320 square feet when installed or erected on site.

(b) Loss of identity.

(1) A trailer is presumed to be permanently affixed and an improvement to real property that loses its identity as a motor vehicle if:

(A) it is attached so that it cannot be reasonably reconstructed and made operational for highway use; or

(B) it is attached or installed in a manner that meets all governmental standards (if any) for the installation, including zoning regulations, building codes, federal regulations and other requirements applicable to the land on which it is located; and it is either:

(i) installed on land owned by the purchaser if the purchaser intends to incorporate the trailer as a permanent fixture to the land; or

(ii) installed on land leased to the purchaser if the lease contract provides that improvements to the land become the property of the lessor.

(2) A trailer is presumed to be temporarily affixed to the real property and remains a motor vehicle if:

(A) the owner of the trailer only has permission to use the land but no contractual right to do so; or

(B) the owner of the trailer has a contractual right to use the land and also has the right to remove the trailer at any time or upon the termination of the contract.

(c) Application of the motor vehicle sales tax to trailers.

(1) A retail sale of a trailer is a taxable sale of a motor vehicle. Motor vehicle sales tax is due on the total sales price including charges for all accessories attached at the time of sale and for transportation prior to the sale. Charges for transportation after the sale (transportation from the place of sale to the delivery or set-up site) and charges for installation or set-up after the sale are not subject to tax.

(2) A retail sale of a farm trailer is not subject to the motor vehicle sales and use tax if it is used primarily on a farm or ranch in the production of food for human consumption, grass, feed for any form of animal life, or other livestock or agricultural products to be sold in the regular course of business. Farm trailers primarily used by the original producer in processing, packing, or marketing his

own livestock or agricultural products are also not subject to motor vehicle sales and use tax.

(3) A retail sale of a farm trailer used exclusively in processing, packing, or marketing agricultural products by an agricultural cooperative or gin are subject to the tax, unless the cooperative can prove the cooperative itself is the original producer of all agricultural products being processed, packed, or marketed, and that those functions are being done at a location operated by the cooperative.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613785

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062

◆ ◆ ◆  
**34 TAC §3.73, §3.85**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §§3.801-3.806, concerning maintenance tax rates assessed for calendar years 1989-1992, which are obsolete and no longer needed. Maintenance tax rates are determined and approved by the Commissioner of Insurance on a year-by-year basis. The prior years' maintenance taxes do not affect current maintenance taxes.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of these rules. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.801. *Assessment of Maintenance Tax, 1990.*

§3.802. *Assessment of Maintenance Tax, 1991.*

§3.803. *Assessment of Maintenance Tax, 1992.*

§3.804. *Assessment of Maintenance Tax for the Texas Workers' Compensation Commission and the Maintenance Tax Surcharge for Texas Workers' Compensation Insurance Fund, 1992.*

§3.805. *Maintenance Taxes.*

§3.806. *Maintenance Tax Assessment for the Texas Workers' Compensation Commission and for the Texas Workers' Compensation Research Center; Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1993.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613722

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062

◆ ◆ ◆  
**34 TAC §3.73**

The Comptroller of Public Accounts proposes new §3.73, concerning qualifying for fair market value deduction and determination of fair market value for replaced vehicles. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.73 is being proposed for repeal. The new section consolidates the substance of the current §3.73, concerning determination of fair market value for replaced vehicles, with the substance of §3.85, concerning engaging in business.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has 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 in providing new information regarding tax responsibilities. The rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §152.002.

§3.73. *Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles.*

(a) A person is engaging in business when the person regularly and actively engages in selling motor vehicles as a primary function of his business and sells at least five different vehicles acquired for the exclusive purpose of resale and not for use within any given 12-month period, or regularly and actively engages in renting or leasing, as defined by the Tax Code, §152.001, as a primary

function of his business, and rents or leases at least five different motor vehicles in any given 12-month period.

(b) For purposes of computing motor vehicle sales tax a person engaging in the business of selling, renting or leasing motor vehicles may deduct the fair market value of a replaced motor vehicle from the total consideration paid for a replacement motor vehicle.

(c) Determining the fair market value of the replaced motor vehicle.

(1) The fair market value of a replaced motor vehicle that has been sold prior to the purchase of a replacement motor vehicle shall be the total consideration received from the sale of the replaced motor vehicle.

(2) The fair market value of the replaced motor vehicle that has not been sold prior to the purchase of the replacement motor vehicle is the book value of the motor vehicle on the title owner's books at the time the motor vehicle is retired from business or personal use, provided the owner's book value is based on accepted accounting principles. If the Comptroller of Public Accounts determines that the owner's book value is not based on accepted accounting principles, the fair market value shall be the total purchase price of the vehicle, less depreciation at the rate of 2.0% per month of the first 36 months from the date of purchase, then at a rate of 1.0% per month for the remainder of the depreciable life of the vehicle.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613723

Martin E. Cherry

Chief, General Law Section

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062



### 34 TAC §3.81

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.81, concerning expiration of out-of-state registration. The section is no longer necessary because of recent changes to the Transportation Code that now allow a vehicle owner to operate in Texas under a thirty-day temporary permit.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements Tax Code, §111.002.

*§3.81. Expiration of Out-of-State Registration.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613724

Martin E. Cherry

Chief, General Law Section

Comptroller of Public Accounts

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For further information, please call: (512) 463-4062



### 34 TAC §3.87

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.87, concerning accessories added to motor vehicles. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The section is being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.87 will be included in new 34 TAC §3.290, concerning motor vehicle repair and maintenance; accessories and equipment added to motor vehicles; moveable specialized equipment, and will clarify policy regarding the sale for resale exemption under the Tax Code, Chapter 151, for accessories and equipment attached to motor vehicles that are held for sale, lease, and rental.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the repeal.

Mr. Reissig also has 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 in providing them with a more effective means of obtaining information. The rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Tax Code, §111.002.

§3.87. *Accessories Added to Motor Vehicles.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613666

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4028



## Subchapter L. Motor Fuels Tax

### 34 TAC §§3.173, 3.186, 3.188, 3.194

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §§3.173, 3.186, 3.188, and 3.194, concerning refunds on gasoline and diesel fuel tax; tax-free sale of motor fuel to the federal government; invoice documentation for gasoline and diesel fuel tax refund claims; and credit or refund of diesel fuel tax used in power-take-off or auxiliary power unit. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.173, concerning refunds on gasoline and diesel fuel tax, includes the substance of the current §§3.173, 3.186, 3.188, and 3.194.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the rules are in effect there will be no cost or benefit to the public from the repeal of these rules. The rules are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implements the Tax Code, §111.002.

§3.173. *Refunds on Gasoline and Diesel Fuel Tax.*

§3.186. *Tax-Free Sale of Motor Fuel to the Federal Government.*

§3.188. *Invoice Documentation for Gasoline and Diesel Fuel Tax Refund Claims.*

§3.194. *Credit or Refund of Diesel Fuel Tax Used in Power-Take-Off or Auxiliary Power Unit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613784

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062



### 34 TAC §3.173

The Comptroller of Public Accounts proposes new §3.173, concerning refunds on gasoline and diesel fuel tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, the current §3.173 is being proposed for repeal. The new section consolidates the substance of the current §3.173, §3.186, concerning tax-free sales of motor fuel to the federal government, §3.188, concerning invoice documentation for gasoline or diesel fuel tax refund claims, and §3.194, concerning credit or refund of diesel fuel tax used in power-take-off or auxiliary power unit.

The Tax Code, Chapter 153, provides for refund of tax paid on losses of motor fuels, and the rules of the comptroller prescribe procedures and records to claim certain categories of refund. This new section prescribes procedures and records required to claim a loss refund for theft by drive away from a retail pump. This new section also identifies the refunds of gasoline and diesel fuel tax that are subject to a four year statute of limitations in subsection (c)(2) of this section. In addition, the language concerning refunds to suppliers for signed statement sales was eliminated to conform with current reporting procedures. A wording change to clarify the definition of exclusive use by a public school district is found in subsection (a) of this section.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has 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 in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §§153.104, 153.119, 153.121, 153.203, 153.205, 153.222, and 153.224.

*§3.173. Refunds on Gasoline and Diesel Fuel Tax.*

(a) Exclusive use. Exclusive use by a public school district or commercial transportation company means use of fuel only in motor vehicles or other equipment:

- (1) operated by the public school district; or
- (2) owned and/or operated by a person performing a contract between the public school district and the owner and/or operator to provide transportation services for the public school district when used in performance of the contract.

(b) Refunds. A person may file a claim for refund of the taxes paid on gasoline or diesel fuel used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft or other accident, and to provide transportation services to public school districts.

(c) Time limitation. A claim for refund must be filed before the expiration of the following time limitations:

(1) one year from the first day of the calendar month following:

- (A) purchase;
- (B) tax exempt sale;
- (C) use, if withdrawn from one's own storage for one's own use;
- (D) export from Texas; or
- (E) loss by fire, theft, or other accident; or

(2) four years from the first day of the calendar month following the overpayment of tax when the overpayment is the result of:

- (A) the same taxpayer making multiple payments of the tax directly to the comptroller on the same motor fuel or paying tax on motor fuel that did not exist (e.g., a taxpayer reported and paid the tax on 10,000 gallons of fuel in a particular reporting period. The taxpayer later filed an amended report for the same period or a report for another period and reported and paid tax again on the same fuel. Essentially, the taxpayer paid the tax on 20,000 gallons where only 10,000 gallons existed.); or
- (B) a typographical error or transposed number that caused more tax to be paid than was due; or
- (C) a misplaced decimal point that caused more tax to be paid than was due.

(d) Filing forms and documentation. Each type of claim for refund must be filed on a form furnished by the comptroller and documentation must be maintained to fully substantiate the claim, including identification of each vehicle or type of equipment in which the fuel was used. For refund purposes, the original invoice

may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above stamped or imprinted wording. Categories of refund claims are:

(1) exports from Texas by non-permitted purchaser. A claim for refund can be filed only on gasoline or diesel fuel exported in quantities of 100 gallons or more. Invoices reflecting that the tax was assessed and documentation that the fuel was exported must be maintained. Proof of export must be one of the following:

- (A) proof of export certified by United States Customs officials if the fuel was exported to a foreign country;
- (B) proof of export certified by port of entry official of the state of importation if ports of entry are maintained;
- (C) proof from the taxing officials of the state into which the fuel was imported showing that the fuel has been accounted for by the exporter on that state's tax reports;
- (D) other proof that the gallons have been accounted for to the state into which the gasoline or diesel fuel was imported; or
- (E) a common or contract carrier's transporting documents listing the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported;

(2) sales by dealers and jobbers to the federal government. For the purposes of this section, the federal government means any department, board, bureau, agency, corporation, or commission created or wholly owned by the United States government. Gasoline and diesel fuel may be sold tax-free to the federal government for its exclusive use. Evidence that sales were made to the federal government must be maintained and must consist of:

- (A) a United States tax exemption certificate - Standard form 1094; or
- (B) copies of the invoice(s) when a United States National credit card - Standard Form 149, was used for the purchase, and including the license number or official vehicle designation if fuel is delivered into the fuel supply tank of a motor vehicle; or
- (C) a copy of a contract between the dealer or jobber and the federal government supported by sales invoices or purchase vouchers under the provisions of the contract;

(3) loss by fire, theft or other accident. A loss of 100 gallons or more for which tax refund is claimed must be caused either by fire, theft or other accident. The claimant must maintain a complete record documenting the incident which occurred to establish that the exact quantity of fuel claimed as lost was actually lost as a result of that incident. The time limitation prescribed in subsection (c)(1) of this section is determined by the date of the first incident of multiple incident loss totaling 100 gallons or more. A claim for refund for loss by fire, theft or other accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(A) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel

fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without paying for the fuel), the following documentation shall be maintained:

(i) a police department report; and

(ii) a separate report for each incident, prepared and signed by the employee(s) witnessing the event. The report must include the date, time, type of fuel, number of gallons, outlet location and the police case number assigned.

(B) If the accidental loss was incurred through a leak in a line or storage tank, the required proof includes:

(i) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should set out the extent of the leak, the date of the examination, and the person's name and title; and

(ii) a statement of the actual loss as determined by computing the measured inventory next preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(C) Claimants who are permitted distributors or suppliers must claim a loss on line 5 of the monthly Texas Fuels Tax Report. If the claim is for a drive-away theft, the claimant must also maintain the documentation and meet the requirements provided in subparagraph (A) of this subsection. If claim is for loss by leakage, the claimant must also maintain the documentation provided in subparagraph (B) of this subsection.

(D) Dealers and jobbers are required to take inventory on the first of each month so an accident should be discovered no later than at the inventory of the succeeding month's business, and corrected promptly thereafter. If inventories have not been accurately or timely measured, and if complete records have not been kept of all withdrawals for sale or use as required by law, a refund claim cannot be honored for payment;

(4) claim for refund on gasoline or diesel fuel used off highway. A claim for refund on fuel used solely for off-highway purposes must list each off-highway vehicle or piece of equipment and the total number of gallons which have been used. Documentation showing that the state tax was assessed and a schedule listing the number of gallons of fuel used in both on- and off-highway vehicles and equipment must be maintained;

(5) incidental highway use. A refund claim may be filed by a person who used gasoline or diesel fuel in motor vehicles incidentally on the highway when the incidental travel on the public highway is infrequent, unscheduled, and insignificant to the total operation of the motor vehicle.

(A) A record showing the date and miles traveled during each highway trip must be maintained.

(B) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed;

(6) sales by diesel fuel dealer for off-highway use. Diesel fuel dealers who have paid the state tax to their supplier and thereafter made a tax-free sale on which a refund claim is filed must maintain copies of invoices issued on each tax-free sale. The invoices must have the name and address of the dealer stamped or preprinted on the invoice, and be completed including:

(A) the purchaser's name;

(B) date of delivery;

(C) number of gallons delivered;

(D) type or description of the vehicle into which the delivery was made (e.g., railway engines, motorboat, refrigeration unit, stationary engine, or off-highway equipment);

(E) statement on the invoices that no tax was collected; and

(F) signature of the purchaser;

(7) gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person filing a refund claim for gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determining the amount of gasoline used:

(A) direct measurement method. The use of a metering device, as defined by §3.176 of this title (relating to Metering Devices Used to Claim Refund of Tax on Fuel Used in Power-Take-Off and Auxiliary Power Units), is an acceptable method for determining fuel usage. A person filing a refund claim for gasoline used to propel motor vehicles with approved measuring or metering devices which measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped and the records must reflect:

(i) the miles driven as shown by any type of odometer;

(ii) the gallons delivered to each vehicle; and

(iii) the gallons used as recorded by the meter or other measuring device;

(B) gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. Records must be maintained reflecting:

(i) each motor vehicle so equipped;

(ii) the miles traveled by each vehicle as recorded by any type of odometer;

(iii) the gallons delivered to each vehicle; and

(iv) the date of delivery;

(C) proposed alternate methods. Proposals for the use of methods not specifically covered by this section to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval;

(D) accurate mileage records must be kept regardless of the method used;

(8) diesel-powered motor vehicles equipped with power take-off or auxiliary power units. Permitted suppliers and users using diesel fuel in motor vehicles equipped with power-take-off or auxiliary power units mounted on the vehicle and using the fuel supply tank of the vehicle may claim a tax credit for the fuel used in

power-take-off operations or by the auxiliary power unit. Users who are required to buy tax-paid diesel fuel for use in motor vehicles equipped with a power-take-off or auxiliary power unit mounted on the vehicle may claim tax refund for fuel used in power-tax-off operations or by the auxiliary power unit. A person filing a refund claim or tax credit for diesel fuel used in the operation of power take-off or auxiliary power units must use one of the following methods in determining the amount of diesel fuel used:

(A) direct measurement method. The use of a metering device, as defined by §3.176 of this title (relating to Metering Devices Used to Claim Refund of Tax on Fuel Used in Power-Take-Off and Auxiliary Power Units), to measure fuel used in the power-take-off or auxiliary power unit is an acceptable method for determining fuel usage. A person filing a refund claim for diesel fuel used to propel motor vehicles with approved measuring or metering devices which measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped and the records must reflect:

- (i) the miles driven as shown by any type of odometer;
- (ii) the gallons delivered to each vehicle; and
- (iii) the gallons used as recorded by the meter or other measuring device;

(B) diesel-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units. Operators of diesel fuel-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may claim refund on 30% of the total diesel fuel used in this state by each vehicle. Records must be maintained reflecting:

- (i) each motor vehicle so equipped;
- (ii) the miles traveled by each vehicle as recorded by any type of odometer;
- (iii) the gallons delivered to each vehicle; and
- (iv) the date of delivery;

(C) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled as recorded by the odometer or hubmeter and subtracting that amount from the total fuel delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable and a tax credit or tax refund may be claimed on that quantity of fuel.

(D) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device operated by a spring-activated air release parking brake that will switch from one tank designated for highway use to another tank designated not for highway use when the vehicle is stationary. The highway tank and the not-for-highway-tank may not be connected by crossover line or equalizer line of any kind. The tax paid on the fuel delivered to the tank designated not-for- highway-use may be taken as a tax credit or claimed as a tax refund. All fuel delivered into the fuel supply tanks of a vehicle equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation must be made on

invoices indicating that fuel was delivered into the tank designated not-for-highway-use;

(E) fixed percentage method. In lieu of using one of the previously mentioned methods, the owner or operator of a motor vehicle equipped with a power take-off or auxiliary power unit mounted on the vehicle may claim a credit or refund of the tax paid on 5.0% of the total taxable diesel fuel used in this state by each vehicle so equipped;

(F) proposed alternate methods. Proposals for the use of methods not specifically covered by this section to determine the amount of diesel fuel used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval;

(G) accurate mileage records must be kept regardless of the method used;

(9) federal agency claim for refund on tax-paid purchase. A federal government agency may file a claim for refund on state taxes paid on gasoline and diesel fuel used exclusively by that agency. Records maintained by the agency must include:

(A) original purchase invoices(s) showing that the state tax was assessed and supported by a United States tax exemption certificate - Standard Form 1094; or

(B) original purchase invoices(s) showing that the state tax was assessed and stamped with the imprint of a United States national credit card - Standard Form 149, issued to the agency purchasing the fuel;

(10) sales of gasoline or diesel fuel to a public school district in this state for its exclusive use, or to a commercial transportation company that provides public school transportation services to a public school district in this state and used by the company exclusively to provide those services. The seller of gasoline or diesel fuel on which the tax has been paid may file for refund of the tax on sales to public school districts for the district's exclusive use and on sales to commercial transportation companies providing public school transportation services to a public school district exclusively. Sellers filing for refund must maintain copies of invoices issued on each such tax-free sale. The invoice(s) must have the name and address of the seller stamped or preprinted on the invoice and include:

- (A) the purchaser's name;
- (B) date of delivery;
- (C) number of gallons delivered;
- (D) type of fuel delivered;
- (E) statement on the invoice that no tax was collected;

and

(F) signature of the purchaser ;

(11) public school districts' claim for refund on tax-paid purchases. A public school district may file a claim for refund of state taxes paid on gasoline and diesel fuel used exclusively by the district. Records maintained by the district must include original invoices showing that the tax was assessed;

(12) commercial transportation companies' claim for refund on tax-paid purchases. A commercial transportation company may file a claim for refund of state taxes paid on gasoline and diesel fuel used to provide public school transportation services exclusively

for a public school district. Records maintained by the company must include original invoices showing that the state tax was assessed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613783

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062



## Subchapter O. State Sales and Use Tax

### 34 TAC §3.329, §3.345

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.329 and §3.345, concerning enterprise projects and state sales and use tax refunds to qualified businesses in enterprise zones. The comptroller has determined the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. These sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.329, concerning State Sales and Use Tax Refunds Available to Enterprise Projects and to Qualified Businesses in Enterprise Zones, includes the substance of the current §3.345, concerning the same subject matter and §3.329, concerning Enterprise Projects.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the rules are in effect there will be no cost or benefit to the public from the repeal of these rules. The rules are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

*§3.329. Enterprise Projects.*

*§3.345. State Sales and Use Tax Refunds to Qualified Businesses in Enterprise Zones.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613714

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4028



### 34 TAC §3.329

The Comptroller of Public Accounts proposes new §3.329, concerning state sales and use tax refunds available to enterprise projects and to qualified businesses in enterprise zones. The new section implements the following changes enacted by House Bill 2065, 74th Legislature, 1995. Enterprise projects designated after August 31, 1995, may not apply for refunds until September 1, 1997 (see subsection (c) (1) ). The maximum amount of refunds to projects designated after August 31, 1995, is \$8 million (see subsection (c) (1) ). The state tax on electricity and natural gas used in a business (see subsection (c) (3) (C) ), and on labor to refurbish buildings in an enterprise zone (see subsection (c) (3) (D) ) are eligible for refund to enterprise projects.

The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, the new section also consolidates the substance of the current §3.345, concerning state sales and use tax refunds to qualified businesses in enterprise zones, with §3.329, concerning enterprise projects.

An additional change involves a reference in subsection (a) (1) to the Texas Enterprise Zone Act that was repealed and re-enacted in the Government Code. The definition of "enterprise project" made reference to Article 5190.7 that is now Government Code, Chapter 2303.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has 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 in providing new information regarding tax responsibilities and a more effective means of obtaining information. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.



The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Government Code, §2303.505(a) and the Tax Code, §151.431 and §151.429(a) .

*§3.329. State Sales and Use Tax Refunds Available to Enterprise Projects and to Qualified Businesses in Enterprise Zones.*

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

(1) Enterprise project - A qualified business designated by the Texas Department of Commerce as an enterprise project under Government Code, Chapter 2303.406, for a five-year period.

(2) Enterprise zone - An area of the state designated by the Department of Commerce as an enterprise zone.

(3) Equipment and machinery - Any machinery and equipment, including office furniture and equipment, used exclusively in an enterprise zone by a qualified business. These terms do not include building materials or motor vehicles.

(4) Local governing body - A governing body of a city or county with an enterprise zone within its boundaries.

(5) New permanent job - A job that meets the criteria of a new permanent job as defined by the Texas Department of Commerce for enterprise projects.

(6) One-time refund - The maximum amount that may be refunded from all claims during the life of a qualified business regardless of the amount of tax paid or jobs retained in an enterprise zone.

(7) Period - The five-year period that the qualified business has been designated as a project unless the designation is revoked.

(8) Qualified business - A person, including a corporation or other entity, that the Texas Department of Commerce certifies has met the criteria required under the Texas Enterprise Zone Act.

(9) Qualified employee - An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.

(10) Retained job - An existing employment position of a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually.

(b) Refund for job retention.

(1) Eligibility for a one-time refund of state sales and use tax. A business is eligible for the refund if:

(A) the business is certified as a qualified business by a local governing body;

(B) has operated in an enterprise zone's jurisdiction for at least three consecutive years before filing a claim;

(C) has retained ten or more jobs held by qualified employees during the year; and

(D) has been certified as eligible for a refund to the Comptroller's Department by the Texas Department of Commerce.

(2) When to apply for a one-time refund. On or after September 1, 1991, a qualified business may apply for a refund of state sales and use tax immediately upon receipt of certification from the Texas Department of Commerce.

(3) Accumulated purchases. A qualified business may apply for and receive a refund of tax paid on equipment and machinery upon which the qualified business paid sales or use tax within four years of the date of application. The allowed refund is up to \$500 per qualified employee retained, for a total of not more than \$5,000. See §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest) for information on the statute of limitations on refunds.

(4) How to apply for a one-time state sales or use tax refund. After a qualified business has been certified as eligible for a refund by the local governing body sponsoring the enterprise zone and by the Texas Department of Commerce, the qualified business may obtain a refund by applying directly to the Comptroller of Public Accounts. A refund request submitted to the comptroller must:

(A) be in writing on forms provided by the comptroller;

(B) be accompanied by copies of the certification by the Department of Commerce; and

(C) list each item purchased, the name of each seller, invoice or contract number, dollar amount of each purchase, and amount of state tax paid on each purchase.

(5) The refund applies to state tax only. No city, county, transit, special purpose district tax, or any other local sales and use tax may be obtained from the state. Information regarding city tax refunds may be obtained from the city having an enterprise zone within its boundaries.

(6) Manufacturers. A qualified business engaged in manufacturing that claims a sales tax refund under both §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) and this section on the same machinery and equipment, may not claim more than the total amount of state sales or use tax paid on the machinery and equipment.

(7) Records. A qualified business must maintain records supporting the refund request which can be verified by audit. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records) .

(c) Enterprise projects.

(1) An enterprise project qualifies for a refund of state sales and use tax of \$2,000 for each job that has been retained or each new permanent job the enterprise project creates for a qualified employee during its designation as an enterprise project. A qualified business receiving its designation as an enterprise project after August 31, 1995, may not apply for a refund of taxes until after August 31, 1997. Not more than \$8 million in state sales and use taxes may be refunded to enterprise projects designated during the biennium beginning September 1, 1995.

(2) Only items of the type described in paragraph (3) of this subsection which are purchased by the enterprise project during the designated period or 90 days prior to its designation may be

considered in determining the amount of refund available to the project.

(3) Subject to the limitations of paragraphs (1) , (2) , (4) , (5) , and (6) of this subsection, a refund will be made based on state tax paid purchases of:

(A) machinery or equipment for use in the enterprise zone in which the enterprise project is located;

(B) building materials for use in constructing, rehabilitating, or remodeling a structure in the enterprise zone in which the enterprise project is located;

(C) labor for remodeling, rehabilitating, or constructing a structure in an enterprise zone; and

(D) electricity and natural gas purchased and consumed in the normal course of business in the enterprise zone.

(4) An enterprise project is not entitled to a refund of any taxes paid by a contractor under a lump-sum contract unless the contractor has received designation as the enterprise project.

(5) Sales and use taxes paid on taxable services are not eligible for refund. Taxes paid on materials purchased in conjunction with services will qualify for refund only when the charge for materials is separated from the charge for services and the amount of tax paid on materials is separated.

(6) Subject to the limitations prescribed in this subparagraph, refunds will be paid directly to the project.

(A) An enterprise project is eligible for a maximum refund of \$250,000 in each state fiscal year.

(i) The total amount refunded to an enterprise project may not exceed the total amount of state tax paid on qualifying purchases, or the amount determined by multiplying \$250,000 by the number of state fiscal years during the designated period of the enterprise project, whichever is less. The refund may not exceed \$2,000 for each job retained or each new job created for a qualified employee.

(ii) An enterprise project that qualifies for a refund that exceeds \$250,000 during a state fiscal year may carry the excess to a subsequent year subject to the \$250,000 limitation in each year.

(iii) Any carry-over or other eligible refunds must be applied for no later than the end of the next state fiscal year that follows the fiscal year in which the designation as an enterprise project expires or is removed by the Texas Department of Commerce.

(B) Claims for refund must be in writing and must indicate the period for which the refund is claimed and must reflect the written approval of the Texas Department of Commerce with respect to the number of jobs retained or new permanent jobs created during the period. A claim for refund may be made annually or semiannually. Annual claims cover the period from September-August of each fiscal year. Semiannual claims cover the period from September-February and from March-August of each fiscal year.

(7) For refunds applied for after August 31, 1991, the following conditions apply:

(A) the qualified business must maintain the same level of employment of qualified employees for three years as existed at the time it qualified for a refund;

(B) annually, the Texas Department of Commerce shall certify that the correct level of employment has been maintained; and

(C) the comptroller shall assess the qualified business that portion of the refund attributable to any decrease in employment, plus penalty and interest from the date of the refund.

(8) An enterprise project must retain records substantiating each claim for refund. The records must be verifiable by audit and include copies of invoices showing the item purchased, the date of purchase, amount of purchase, the amount of tax paid, and the identity of the seller. The records must also show that the machinery and equipment and building materials purchased are for use within the zone. Employment records must also be kept verifying the number of new jobs created.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613713

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4028



## Subchapter GG. Insurance Tax

### 34 TAC §§3.801-3.806

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §§3.801-3.806, concerning maintenance tax rates assessed for calendar years 1989-1992, which are obsolete and no longer needed. Maintenance tax rates are determined and approved by the Commissioner of Insurance on a year-by-year basis. The prior years' maintenance taxes do not affect current maintenance taxes.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of these rules. The repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.801. *Assessment of Maintenance Tax, 1990.*

§3.802. *Assessment of Maintenance Tax, 1991.*

§3.803. *Assessment of Maintenance Tax, 1992.*

§3.804. *Assessment of Maintenance Tax for the Texas Workers' Compensation Commission and the Maintenance Tax Surcharge for Texas Workers' Compensation Insurance Fund, 1992.*

§3.805. *Maintenance Taxes.*

§3.806. *Maintenance Tax Assessment for the Texas Workers' Compensation Commission and for the Texas Workers' Compensation Research Center; Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1993.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613726

Martin E. Cherry

Chief, General Law Section

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062



### 34 TAC §3.809, §3.826

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.809 and §3.826, concerning overpayment of premium tax liability and the tax return and prepayment due dates and penalty and interest for failing to report or the underreporting of tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify consolidation of related sections into a single section. The new §3.809 includes the substance of current §3.809 and §3.826.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the rules are in effect there will be no cost or benefit to the public from the repeal of these rules. The rules are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement the Tax Code, §111.002.

§3.809. *Overpayment of Premium Tax Liability.*

§3.826. *Tax Return and Prepayment Due Dates and Penalty and Interest for Failing to Report or the Underreporting of Tax.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613712

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4028



### 34 TAC §3.809

The Comptroller of Public Accounts proposes new §3.809, concerning due dates, penalty and interest, and overpayments. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.809, concerning the overpayment of premium tax liability, and §3.826, concerning tax return and prepayment due dates and penalty and interest for failing to report or the underreporting of tax, are being proposed for repeal. The new section consolidates the substance of the current §3.826 and §3.809.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has 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 in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the new section may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Insurance Code, Article 4.10, Article 4.11, Article 4.11B, Article 9.59, Art. 20A.33 and, Title 2, Tax Code, Subtitles A and B.

§3.809. *Due Dates, Penalty and Interest, and Overpayments.*

(a) Premium and Maintenance Tax Return due date. The premium tax and maintenance tax return for each taxable year ending the preceding December 31st shall be filed and the total amount of tax due shall be paid on or before the 1st day of March of each year or if a company is required to file an annual statement after March 1, the premium tax and maintenance tax report is required to be filed at that time.

(b) Premium tax prepayments.

(1) A semiannual prepayment of premium tax must be made on March 1, or at the same time that the annual statement is required to be filed, and August 1 by all insurers with a net tax liability for the previous calendar year in excess of \$1,000. The prepayment shall equal the lesser of one-half of the total premium tax paid for the previous calendar year, or one-half of the current year's tax liability. If no premium tax was paid during the previous calendar year, the prepayment will be based on the tax which would be owed on the aggregate of premium receipts for the two preceding calendar quarters based on the minimum tax rate specified by law. If the premium tax liability for the previous year was between \$ .01 and \$1,000, no prepayment is due.

(2) The amount due is the lesser of the total annual premium tax liability from the previous year, or the actual tax liability for the current year multiplied by 50%.

(c) Penalty and interest. Any taxes due prior to September 1, 1993, including prepayments, are subject to the Insurance Code in effect at that time. Therefore, any assessments issued by the comptroller for additional taxes which were originally due prior to September 1, 1993, fall under the penalty and interest provisions contained within the Insurance Code, Article 4.13 and Article 4.14, in effect through August 31, 1993. Refer to paragraph (1) of this subsection. The comptroller does not have the authority to waive penalty or interest on assessments made for periods prior to September 1, 1993.

(1) Prepayments and tax returns due prior to September 1, 1993.

(A) Late payment.

(i) Penalty. A penalty equal to 5.0% of the amount of taxes due shall be assessed for each month or portion of a month for which such payment is late. The penalty shall not exceed 20%.

(ii) Interest. Interest shall accrue at an annual rate of 9.0% from the due date until the date paid.

(B) Underpayment.

(i) Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(1) of this section will be assessed penalty, as prescribed in subparagraph (A)(i) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.

(ii) Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(1) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.

(2) Prepayments and tax returns due on or after September 1, 1993.

(A) Late payment.

(i) A penalty of 5.0% will be assessed on all payments which are received 1-30 days after the due date. An additional 5.0% penalty will be assessed on tax payments received more than 30 days after the due date.

(ii) Interest will be assessed on payments received more than 60 days after the due date at the rate of 12% per annum. Interest will begin to accrue on the 61st day from the due date and continue through date of the tax payment. The interest will be in addition to the 10% penalty assessed in clause (i) of this subparagraph.

(B) Underpayment.

(i) Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed penalty, as prescribed in subparagraph (A)(i) of this paragraph, on the difference between the amount of semiannual prepayment tax liability actually paid and the amount due.

(ii) Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of semiannual prepayment tax liability actually paid and the amount due.

(d) Overpayment of tax liability. Commencing with the tax return due on March 1, 1995, if the sum of the semiannual prepayments exceeds the actual tax due as determined by the accurate and correct filing of the original or amended annual tax return, the overpayment will be automatically refunded to the taxpayer unless the taxpayer notifies the comptroller to apply the overpayment to another period. The notification should be written on the face of the tax return.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613711

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4028



**34 TAC §3.817**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §3.817, concerning electronic transfers of certain payments by regulated entities to the State Board of Insurance. House Bill 1461 transferred the collection, reporting, and administration of taxes and certain fees and assessments to the comptroller effective September 1, 1993, and enacted under Article 1.04D in the Insurance Code. The procedures for electronic fund transfers to the Comptroller of Public Accounts are stipulated in the Government Code, §404.095 and in 34 TAC, §3.9.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of this rule. The repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Tax Code, §111.002.

*§3.817. Electronic Transfers of Certain Payments by Regulated Entities to the State Board of Insurance.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613725

Martin E. Cherry

Chief, General Law Section

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 90. Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition

##### Subchapter B. Application Procedures

##### 40 TAC §90.14, §90.15

The Texas Department of Human Services (DHS) proposes an amendment to §90.14, concerning increase in capacity, and §90.15, concerning renewal procedures and qualifications, in its Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions chapter. The purpose of the amendments is to reference §533.065 of the Texas Health and Safety Code, which governs the approval or expansion of beds, and to add rules which clarify what constitutes the timely filing of a licensure application.

Terry Trimble, interim commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the policy will be easier to find. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-370, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714- 9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs, and under the Health and Safety Code, Chapter 242, which authorizes the department to license ICF-MR facilities, and §222.042, which restricts the department's authority to license these facilities.

The amendments implement the Human Resources Code, §§22.001-22.030, and Chapter 242 and the Health and Safety Code, §222.042.

##### *§90.14. Increase in Capacity.*

(a) During the license term, a license holder may not increase capacity without approval from the Texas Department of Human Services (DHS). The license holder must submit to DHS a complete application for increase in capacity and the fee required in §90.19 of this title (relating to License Fees).

**(b) An application for an increase in beds that was not included in the plan approved under §533.062 of the Health and Safety Code will not be approved by DHS.**

(c)[(b)] Upon approval of an increase in capacity, DHS will issue a new license.

##### *§90.15. Renewal Procedures and Qualifications.*

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

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark. **If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the licensing section of the state office of Long Term Care-Regulatory, DHS, within 30 days of the postmark and the license holder proves to the satisfaction of the department that the delay was due to the fault of the United States Postal Service. It is the responsibility of the license holder to ensure that his application is timely received by DHS.**

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613829

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: November 15, 1996

For further information, please call: (512) 438-3765



# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter G. Regulations for Taking, Possessing, and Transporting Threatened Nongame Species  
**31 TAC §65.175, §65.176**

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the proposed new §65.175 and §65.176, which appeared in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7009).

Issued in Austin, Texas, on September 12, 1996.

TRD-9613419

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: September 12, 1996

For further information, please call: (512) 389-4642

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**TITLE 34. PUBLIC FINANCE**

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

**34 TAC §3.329**

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption the proposed amendment §3.329, which appeared in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2996).

Issued in Austin, Texas, on September 19, 1996.

TRD-9613715

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: September 19, 1996

For further information, please call: (512) 463-4028

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# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 22. EXAMINING BOARDS

### Part XV. Texas State Board of Pharmacy

#### Chapter 281. General Provisions

##### 22 TAC §281.26

The Texas State Board of Pharmacy adopts an amendment to §281.26, concerning rules governing penalties against a license. The amendment is adopted without changes to the proposed text published in the June 25, 1996, edition of the *Texas Register* (21 TexReg 5828). The amendment clarifies that the definition of "diversion of controlled substances" applies to the phrase as it is used in §28B of the Texas Pharmacy Act, which relates to administrative penalties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16(a), which gives the Board the authority to adopt and amend rules for the proper administration and enforcement of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613816

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 11, 1996

Proposal publication date: June 25, 1996

For further information, please call: (512) 305-8027



##### 22 TAC §281.75

The Texas State Board of Pharmacy adopts new §281.75, concerning vehicle inscription exemption. The rule is adopted without changes to the proposed text published in the April 16, 1996, edition of the *Texas Register* (21 TexReg 3304). The rule outlines the section of the Texas Pharmacy Act which

exempts agency vehicles from bearing agency identification and specifies the primary use of agency vehicles and the purpose to be served by not placing a sign identifying the agency on the vehicle.

No comments were received regarding adoption of the rule.

The rule is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) §16 (a), which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; §17(s) which specifies that Board vehicles are exempt from bearing state government identification and may be registered with the State Department of Highways and Public Transportation in an alias name for investigative personnel only.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613815

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 11, 1996

Proposal publication date: April 16, 1996

For further information, please call: (512) 305-8027



#### Chapter 291. Pharmacies

##### All Classes of Pharmacies

##### 22 TAC §291.23

The Texas State Board of Pharmacy adopts new §291.23, concerning pilot or demonstration research projects for innovative applications in the practice of pharmacy. The rule is adopted without changes to the proposed text published in the April 16, 1996, edition of the *Texas Register* (21 TexReg 3305). This rule will specify procedures to be followed in applying for approval of a pilot and demonstration research project for innovative applications in the practice of pharmacy.

A comment was received regarding adoption of the new rule from Pharmaceutical Research and Manufacturers of America (PhRMA). The comment suggests that the rule should be amended to allow comment prior to the board's approval of

a project. The Board disagrees with this comment because a comment period is allowed during the rule making process if the Board decides to propose changes to the rule based on the results of the pilot project.

The second comment from PhRMA suggests that §291.23 (c)(3) should be amended to include a data collection requirement. The Board disagrees with this comment because a data collection requirement is contained in §(e)(1) which specifies that the result of the project be presented to the Board.

The rule is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) §16(a) which gives the Board the authority to adopt rules for proper administration and enforcement of the Act and §17(v) which states that Board may specify the procedures to be followed in applying for approval of pilot and demonstration research projects for innovative applications in the practice of pharmacy.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613824

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 11, 1996

Proposal publication date: April 16, 1996

For further information, please call: (512) 305-8027

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**Community Pharmacy (Class A)**

**22 TAC §291.36**

The Texas State Board of Pharmacy adopts an amendment to §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendment is adopted with changes to the proposed text published in the April 23, 1996, edition of the *Texas Register* (21 TexReg 3498). The amendment clarifies the special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

Changes to the proposed text published in the April 23, 1996, edition of the *Texas Register* are as follows:

Section 291.36(c)(4)(A)(iii) was changed to clarify that a pharmacist may compound sterile pharmaceuticals without process validation on a temporary basis only. Subclauses (I) and (II) were reformatted to clearly indicate that on-site process validation must occur within seven days of beginning work at a pharmacy.

A change to §291.36(c)(4)(A)(iv) makes the clause consistent with other portions of the rules by replacing the phrase "risk level" with "type of pharmaceutical."

In §291.36(c)(4)(B)(i)(I)(-a-) and (C)(ii)(I)(-a-), the phrase "on-the-job" is retained to clarify the type of training required.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) Section 4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16 (a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; Section 17(a)(3) which gives the Board the authority to establish requirements for practical training of pharmacists; and Section 17(o) which gives the board the authority to establish rules for the use of supportive personnel in pharmacies.

*§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.*

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

(c) Personnel.

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

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i)-(ii) (No change.)

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy supportive personnel compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site process validation within seven days of commencing work at the pharmacy.

(iv) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(v) (No change.)

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise supportive personnel compounding sterile pharmaceuticals shall:

(I) effective March 1, 1996, complete through a single course, a minimum of 20 hours of instruction and experience in

the areas listed in subparagraph (A) of this paragraph. Such training may be through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; and

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and end-product testing;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) Pharmacists shall discontinue preparation of sterile pharmaceuticals if the training specified in clause (i) of this subparagraph is not completed by March 1, 1996. Such pharmacists may continue to compound sterile pharmaceuticals and supervise supportive personnel compounding sterile pharmaceuticals during the interim between the effective date of these rules and March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 20 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.

(iii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Supportive personnel/pharmacy technicians. In addition to the qualifications and training outlined in paragraph (3) of this subsection, all supportive personnel who compound sterile pharmaceuticals shall:

(i) have a high school or equivalent education;

(ii) either:

(I) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through the:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction

and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) completion of a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in process and final checks; and

(iii) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) (No change.)

(5) (No change.)

(d-f) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613823

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 11, 1996

Proposal publication date: April 23, 1996

For further information, please call: (512) 305-8027



## Institutional Pharmacy (Class C)

### 22 TAC §291.73

The Texas State Board of Pharmacy adopts an amendment to §291.73, concerning Personnel in a Class C Pharmacy. The amendment is adopted with changes to the proposed text published in the April 23, 1996, edition of the *Texas Register* (21 TexReg 3499). The amendment clarifies the special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

Changes to the proposed text published in the April 23, 1996, edition of the *Texas Register* are as follows:

Section 291.73(f)(1)(C) was changed to clarify that a pharmacist may compound sterile pharmaceuticals without process validation on a temporary basis only. Clauses (i) and (ii) were reformatting to clearly indicate that on-site process validation must occur within seven days of beginning work at a pharmacy.

Section 291.73(f)(2)(A)(i)(I) and (3)(B)(i)(I), the phrase "on-the-job," is retained to clarify the type of training required.

In §291.73(f)(3) was modified to clarify that the special qualifications for supportive personnel compounding sterile pharmaceuticals are in addition to the general qualifications for all supportive personnel. This is consistent with the requirements in Class A (Community) Pharmacies Compounding Sterile Pharmaceuticals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) Section 4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16 (a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; Section 17(a)(3) which gives the Board the authority to establish requirements for practical training of pharmacists; and Section 17(o) which gives the board the authority to establish rules for the use of supportive personnel in pharmacies.

§291.73. *Personnel.*

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

(f) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(1) General.

(A)-(B) (No change.)

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may compound sterile pharmaceuticals and supervise pharmacy supportive personnel compounding sterile pharmaceuticals without process validation provided the pharmacist:

(i) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in this paragraph; and

(ii) completes the on-site process validation within seven days of commencing work at the pharmacy.

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

(2) Pharmacists.

(A) All pharmacists who compound sterile pharmaceuticals or supervise supportive personnel compounding sterile pharmaceuticals shall:

(i) effective March 1, 1996, complete through a single course, a minimum 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be evidenced by either:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an American Council on Pharmaceutical Education approved provider which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; and

(ii) possess knowledge about:

(I) aseptic processing;

(II) quality control and quality assurance as related to environmental, component, and end-product testing;

(III) chemical, pharmaceutical, and clinical properties of drugs;

(IV) container, equipment, and closure system selection; and

(V) sterilization techniques.

(B) Pharmacists shall discontinue preparation of sterile pharmaceuticals if the training specified in subparagraph (A) of this paragraph is not completed by March 1, 1996. Such pharmacists may continue to compound sterile pharmaceuticals and supervise supportive personnel compounding sterile pharmaceuticals until March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 20 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.

(C) The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training as specified in paragraph (2) or (3) of this subsection.

(3) Supportive personnel/pharmacy technicians. In addition to the qualifications and training outlined in subsection (e) of this section, all supportive personnel who compound sterile pharmaceuticals shall:

(A) have a high school or equivalent education;

(B) either:

(i) complete through a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be obtained through the:

(I) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(II) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in paragraph (1) of this subsection; or

(ii) complete a training program which is accredited by the American Society of Health-System Pharmacists (formerly the

American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(I) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in this subparagraph of this paragraph; and

(III) the supervising pharmacist conducts in process and final checks; and

(C) acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training as specified in this paragraph or paragraph (2) of this subsection.

(D) discontinue preparation of sterile pharmaceuticals if the training specified in subparagraphs (A) and (B) of this paragraph is not completed by March 1, 1996. Such supportive personnel may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 40 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.

(4) (No change.)

(g) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1996.

TRD-9613817

Fred S. Brinkley, Jr., R.Ph., M.B.A.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 11, 1996

Proposal publication date: April 23, 1996

For further information, please call: (512) 305-8027



## Part XVII. Texas State Board of Plumbing Examiners

### Chapter 361. Administration

#### Contested Case: Investigations

##### 22 TAC §361.26

The Texas State Board of Plumbing Examiners adopts an amendment to §361.26, Contested Cases: Investigations, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6934).

This amended to require more plumbers to put the name and mailing address and the telephone number of the Board on

service documents to provide the public with an avenue to complain about the services provided.

No comments were received regarding adoption of the amended rules.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613846

Ernest Pereyra, CPA

Chief Fiscal Officer

Texas State Board of Plumbing Examiners

Effective date: October 14, 1996

Proposal publication date: July 26, 1996

For further information, please call: (512) 458-2145



## Rule of Practice and Procedure

### 22 TAC §361.27

The Texas State Board of Plumbing Examiners adopts new §361.27, concerning Rules of Practice and Procedure, with nonsubstantive changes to the proposed text as published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5235).

This new rule is being adopted to specify the process for entry of appearance, failure to enter an appearance, and failure to appear at a hearing on a contested case.

A public hearing was held on August 14, 1996, to discuss this new rule. The comments related to this new rule encouraged the Board to give a plumber every opportunity to appear in court before requesting a default judgement. In response to the public hearing the Board increased the number of required methods used to notify a plumber of the impending case.

The new section is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§361.27. *Rules of Practice and Procedure.*

(a) Entry of Appearance; Continuance

(1) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance within 20 days of the date on which the notice of hearing is provided to the respondent.

(2) For the purposes of this section, a contested case shall mean any action that is referred by the Texas State Board of Plumbing Examiners to the State Office of Administrative Hearings.

(3) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings.

(4) For purposes of this section, notice of hearing is provided to a respondent on the date of mailing the notice via certified mail and via regular mail containing a notice of hearing in accordance with provisions of the Administrative Procedure Act.

(5) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing, entitles the Texas State Board of Plumbing Examiners to a continuance of the hearing in the contested case at the Board's discretion for such a reasonable period of time as determined by the Administrative Law Judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date of the mailing of the notice.

(6) The notice of hearing provided to a licensee for a contested case as defined in this section shall include the following language in capital letters in bold face type: **THE FILING OF AN UNTIMELY APPEARANCE IN PERSON OR THROUGH AN ANSWER OR OTHER RESPONSIVE PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE STATE BOARD OF PLUMBING EXAMINERS TO A CONTINUANCE OF THE HEARING FOR A TIME PERIOD SET BY THE ADMINISTRATIVE LAW JUDGE, BUT NOT FOR LESS THAN 20 DAYS.**

(b) Failure to Attend Hearing: Default Judgment

(1) If a respondent fails to appear in person or through their legal representative on the day and at the time set for hearing in a contested case regardless of whether an appearance has been entered, the Administrative Law Judge, upon motion by the petitioner, shall enter a default judgement in the matter adverse to the respondent who has failed to attend the hearing.

(2) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the Complaint shall be admitted as prima facie evidence, and deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.

(3) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Complaint, and upon the proof of proper notice to the defaulting party opponent. Such notice also shall include the following language in capital letters in bold face type: **FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613845  
Ernest Pereyra, CPA  
Chief Fiscal Officer  
Texas State Board of Plumbing Examiners  
Effective date: October 14, 1996  
Proposal publication date: June 11, 1996  
For further information, please call: (512) 458-2145

◆ ◆ ◆  
**Criminal Record Review**

**22 TAC §361.28**

The Texas State Board of Plumbing Examiners adopts new §361.28, concerning Criminal Record Review, without changes to the proposed text as published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5236).

This new rule is being adopted to allow individuals convicted of a first time misdemeanor driving while intoxicated or possession of drugs to be approved by the Chief Examiner to take the requested examination and the Chief Field Representative to renew their license.

A public hearing was held on August 14, 1996, to discuss this new rule. The comments related to this new rule encouraged the Board to ensure that they had the final approval over the denial of individuals with a criminal record and not the Chief Examiner or Chief Field Representatives. The Board believes their concerns were addressed in the new rule.

The new section is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613848  
Ernest Pereyra, CPA  
Chief Fiscal Officer  
Texas State Board of Plumbing Examiners  
Effective date: October 14, 1996  
Proposal publication date: June 11, 1996  
For further information, please call: (512) 458-2145

◆ ◆ ◆  
**Chapter 365. Licensing**

**Application for License or Endorsement after Revocation**

**22 TAC §365.10**

The Texas State Board of Plumbing Examiners adopts an amendment §365.10, Application for License or Endorsement after Revocation, without changes to the proposed text as published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5237).

This rule is being amended to clarify that an individual's application must be approved by the Board after a revocation.

A public hearing was held on August 14, 1996, to discuss this rule amendment. The comments related to this amendment encouraged the Board to ensure that they had the final approval over individuals requesting to take the plumbing examination after revocation. The Board believes their concerns were addressed in the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613849

Ernest Pereyra, CPA

Chief Fiscal Officer

Texas State Board of Plumbing Examiners

Effective date: October 14, 1996

Proposal publication date: June 11, 1996

For further information, please call: (512) 458-2145



## Continuing Education Programs

### 22 TAC §365.14

The Texas State Board of Plumbing Examiners adopts an amendment to §365.14, concerning Continuing Education Programs, without changes to the proposed text as published in the June 11, 1996, issue of the *Texas Register* (21 TexReg 5237).

This rule is being amended to change the legal cite for Central Education Agency certification requirements and allows for more than 4 providers of continuing education.

A public hearing was held on August 14, 1996, to discuss this rule amendment. The comments related to this amendment encouraged the Board have as many continuing education providers as possible. The Board believes their concerns were addressed in the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613850

Ernest Pereyra, CPA

Chief Fiscal Officer

Texas State Board of Plumbing Examiners

Effective date: October 14, 1996

Proposal publication date: June 11, 1996

For further information, please call: (512) 458-2145



## Chapter 367. Enforcement

### Display of License

#### 22 TAC §367.4

The Texas State Board of Plumbing Examiners adopts an amendment to §367.4, concerning Display of License, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6934).

This rule is being amended to make it clear that magnetic signs on service vehicles are not sufficient to comply with the permanency requirement of this rule.

One comment was received on this proposed rule which questioned the merit of the requirement because he felt temporary magnetic signs were sufficient. The Board disagrees with this comment because magnetic signs would not satisfy the permanency requirement of this rule.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613844

Ernest Pereyra, CPA

Chief Fiscal Officer

Texas State Board of Plumbing Examiners

Effective date: October 14, 1996

Proposal publication date: July 26, 1996

For further information, please call: (512) 458-2145



## Part XXII. Texas State Board of Public Accountancy

### Chapter 515. Licenses

#### 22 TAC §515.1

The Texas State Board of Public Accountancy adopts an amendment to §515.1 without changes to the proposed text as published in the August 8, 1996, issue of the *Texas Register*, (21TexReg7321).

The amendment allows for a clearer understanding that the board may reject applications because they are incomplete or are accompanied with insufficient payment of fees.

The amendment will function by requiring applicants and licensees to complete and return their applications to the board accompanied by the required fees.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, Section 6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.



Issued in Austin, Texas, on September 19, 1996.

TRD-9613861

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: October 14, 1996

Proposal publication date: August 8, 1996

For further information, please call: (512) 505-5566

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 330. Municipal Solid Waste

Texas Natural Resource Conservation Commission (commission) adopts an amendment to §330.602, concerning Municipal Solid Waste Disposal Fees and new §330.804, concerning The Use of Tire Shreds in Landfills. The amendment and new section are adopted without changes to the proposed text as published in the July 23, 1996, issue of the *Texas Register* (21 TexReg 6873) and will not be republished. Similar rules were adopted on an emergency basis by the commission on March 20, 1996, as necessary to prevent imminent peril to the public health, safety or welfare. The emergency rules were published in the April 12, 1996, issue of the *Texas Register* (21 TexReg 3103) with an expiration date of July 18, 1996, and were subsequently extended by the commission until September 16, 1996, as published in the July 23, 1996, issue of the *Texas Register* (21 TexReg 6861).

The commission had received numerous reports from state, city and county health officials that whole waste tires were piling up at generator locations due to the lack of sufficient end-use markets to meet the volume of tires generated. The concerns associated with this problem included fire, the creation of breeding grounds for mosquitoes, snakes and rodents, and human health problems, as well as traffic safety due to tires piling up alongside roadways. Whole tire piles are easily ignited and extremely difficult to control. An uncontrolled burning tire pile releases toxic chemicals into the air and may also result in contamination to groundwater.

The dangerous conditions involving the overabundance of whole tire piles is connected in large part to the fact that many waste tire processors are close to or over authorized tire shred storage capacity. This situation intensified significantly after January 1, 1996, when the end-use market requirement became a condition of reimbursement for processors. In spite of significant efforts to promote the development of end-use markets for whole tires and tire shreds, only 37% of the scrap tires generated in Texas are being forwarded to end use markets. Due to the lack of sufficient end-use markets to meet the volume of tires generated, tire shreds have piled up at storage sites. Although several landfills throughout the state had been using tire shreds for landfill drainage layers, protective covers or final covers, high transportation costs have made the

use of tire shreds cost prohibitive for many landfill owners and operators.

Under the amendment and new section, as an incentive to encourage increased usage of tire shreds in landfills, owners and operators of municipal solid waste landfills who utilize tire shreds in their landfill design may receive a reduction in the fee they pay for waste disposal. This is a one-time, 50% (62.5 cents per ton) reduction in the fee corresponding to the number of tire-shred tons used in the landfill design. Therefore, a landfill using 15 tons of tire shreds in an approved component of landfill design can receive a 50% reduction in its Municipal Solid Waste Disposal Fee for 15 tons of municipal waste in the quarterly billing period following use of the tire shreds. This fee reduction is designed to mitigate the cost differential between tire shreds and other more commonly used materials. Utilizing tire shreds as part of the landfill design is an approved method for recycling tires. Since the adoption of the emergency rule, there has been an increase in the number of landfills which utilize tire shreds. With the reduction in the disposal fee, it is anticipated that 950,000 tons of tire shreds could be recycled through use in landfills. This will enable the continued collection of tires, because storage space will be made available with the movement of the existing shred piles, which will in turn reduce whole tire piles and the hazards these piles represent. In authorizing the fee reduction for the use of tire shreds in landfill design, the agency is in no manner approving or advocating the use of any particular method or process for the use of tire shreds.

The comment period closed on August 22, 1996. The commission did not receive any comments concerning the amendment and new rule.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to provide procedures that will allow the commission to prevent imminent peril to the public health, safety, and welfare by establishing an incentive for the beneficial use of shredded tires in landfills. Due to the lack of sufficient end-use markets to meet the volume of tire shreds produced, tire shreds have piled up at storage sites, and whole tires are piling up at generator locations resulting in numerous reports from state, county and city health officials about their concerns of the threat of fires, creation of breeding grounds for mosquitos, snakes and rodents, and their attendant human health nuisances and problems, as well as traffic safety due to tires piling up alongside roadways. Because of those concerns, the commission adopted emergency rules on March 20, 1996, to temporarily alleviate the problems pending adoption of the permanent rules through the normal rulemaking process. When tire storage sites are filled to capacity, tire processors cannot legally accept additional tires for shredding and, therefore, cannot collect waste tires from generators. The rules will substantially advance this specific purpose by allowing landfill operators to use tire shreds in their landfills as part of the leachate collection system drainage layer, protective cover, or final cover as a means of reducing the amount of tire shreds in storage which prevent tire processors from shredding additional tires. The rules only provide an incentive to expedite the elimination of waste tire piles and therefore do not place a

burden on any individual. These rules make existing rules less stringent only to the extent that they provide for a reduction in fees paid and allow the use of an additional type of material for landfill construction. Since transportation of the tire shreds to a landfill location is expensive, the commission will provide an incentive by reducing the amount of solid waste disposal fees paid to the commission by 50% for the equivalent tonnage of tire shreds used at the landfill. Promulgation and enforcement of these rules will not affect private real property because the rules pertain only to a new incentive to increase the level of collection, shredding, and beneficial use of waste tires, all of which are currently authorized. The rules will not create a burden on private real property because they are specifically designed to remove any threat to its safety or its environment by providing an incentive to remove any nearby waste tire piles that could result in uncontrolled fires. This action is also covered by exemptions in Senate Bill 14 concerning public nuisances and actions taken in response to a real and substantial threat to public health and safety.

#### Subchapter P. Fees and Reporting.

##### **30 TAC §330.602**

The amendment is adopted under Health and Safety Code §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code, and under Health and Safety Code §361.484 which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health and Safety Code, relating to the Waste Tire Recycling Program. §330.602. Fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613682

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: October 9, 1996

Proposal publication date: July 23, 1996

For further information, please call: (512) 239-1970



#### Subchapter R. Management of Whole Used or Scrap Tires

##### **30 TAC §330.804**

The new section is adopted under Health and Safety Code §361.024 which gives the commission the authority to adopt rules consistent with Chapter 361, Health & Safety Code, and under Health and Safety Code §361.484 which gives the commission the authority to adopt rules necessary to implement Subchapter P, Chapter 361, Health and Safety Code, relating to the Waste Tire Recycling Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613683

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: October 9, 1996

Proposal publication date: July 23, 1996

For further information, please call: (512) 239-1970



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### Part III. Texas Youth Commission

#### Chapter 85. Admission and Placement

##### Placement Planning

##### **37 TAC §85.21**

The Texas Youth Commission (TYC) adopts an amendment to §85.21, concerning program assignment system, without changes to the proposed text as published in the August 13, 1996, issue of the *Texas Register* (21 TexReg 7645).

The justification for amending the section is to prevent danger to youth and staff which is frequently caused by extreme overcrowding of delinquent youth in high restriction programs.

The amendment will provide for initially placing medium and low risk general offenders in medium restriction TYC programs. High risk general offenders will continue to be placed in high restriction TYC programs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine placement and treatment.

The proposed rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 18, 1996.

TRD-9613677

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: October 9, 1996

Proposal publication date: August 13, 1996

For further information, please call: (512) 483-5244



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

# Part I. Texas Department of Human Services

## Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

### Subchapter I. Resident Assessment

#### 40 TAC §19.801

The Texas Department of Human Services (DHS) adopts an amendment to §19.801, with changes to the proposed text as published in the June 21, 1996, issue of the *Texas Register* (21 TexReg 5681).

Justification for the amendment is to reduce paperwork in Medicaid facilities, thereby freeing staff time to devote to the care of the residents.

The amendment will function by complying with House Bill 867, passed by the 74th Texas Legislature, which requires that the Texas Medicaid Nursing Facility Program use a single instrument for both payment and assessment. The rules require that nursing facilities submit the Minimum Data Set (MDS) electronically beginning January 1, 1997, and that quarterly assessments be an expanded version containing additional assessment data.

The department received comments from the Texas Health Care Association.

Comment: The proposed rule does not clearly describe what is an expanded version of the MDS quarterly assessment. The adopted rule needs to specify what is included in the expanded version.

Response: The department disagrees. The proposed language, which references the MDS expanded core elements specified in the Health Care Financing Administration's (HCFA's) Resident Assessment Instrument, is clear. Section S, a Texas-specific addendum, has been approved by HCFA as part of the Texas MDS, so there is no need to mention it specifically.

Comment: The proposed rule will cause many facilities to change their system that triggers the completion of an MDS. Change the last sentence in §19.801 to the following: "Nursing facilities must have a policy that their schedule for submission of all future assessments will be set on one of the following schedules: (1) No more that 365 days from the last assessment; or (2) Annually on the date of the first full assessment after April 1, 1996."

Response: The department will delete the sentence in §19.801 which references a fixed schedule.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

#### §19.801. Resident Assessment.

The facility must conduct initially and periodically a comprehensive accurate, standardized, reproducible assessment of each resident's functional capacity. By January 1, 1997, in Medicaid nursing facilities, annual and quarterly assessments must be transmitted electronically to the Texas Department of Human Services.

(1) (No change.)

(2) Comprehensive assessments.

(A) The facility must make a comprehensive assessment of all residents' needs, utilizing the Health Care Financing Administration's (HCFA) approved Resident Assessment Instrument (RAI), which describes the resident's capability to perform daily life functions and significant impairments in functional capacity. Licensed-only facilities do not have to complete Medicaid-specific sections.

(B)-(C) (No change.)

(D) The nursing facility must examine each resident, and review the minimum data set expanded core elements specified in HCFA's RAI no less than once every three months and as appropriate. Results must be recorded to assure continued accuracy of the assessment.

(E)-(F) (No change.)

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1996.

TRD-9613746

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: October 15, 1996

Proposal publication date: June 21, 1996

For further information, please call: (512) 438-3765



## Chapter 47. Primary Home Care

### Service Requirements

#### 40 TAC §47.2913

The Texas Department of Human Services (DHS) adopts an amendment to §47.2913, without changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7363).

The justification for the amendment is to reflect the streamlined prior approval process.

The amendment will function by allowing fewer breaks in services to primary home care clients.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department

with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1996

Proposal publication date: August 6, 1996

For further information, please call: (512) 438-3765



## Chapter 48. Community Care for

### Eligibility

#### **40 TAC §48.2904**

The Texas Department of Human Services (DHS) adopts an amendment to §48.2904, without changes to the proposed text published in the August 13, 1996, issue of the *Texas Register* (21 TexReg 7653).

The justification for the amendment is to clarify that the income exclusion of the first \$65 plus one-half of the client's earnings

applies only to earned income received by the client or spouse. Only one income exclusion is applied to the individual's or the couple's earned income.

The amendment will function by providing a better understanding of the type of income the income exclusion can be applied to.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The amendment implements §§22.001-22.030 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



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