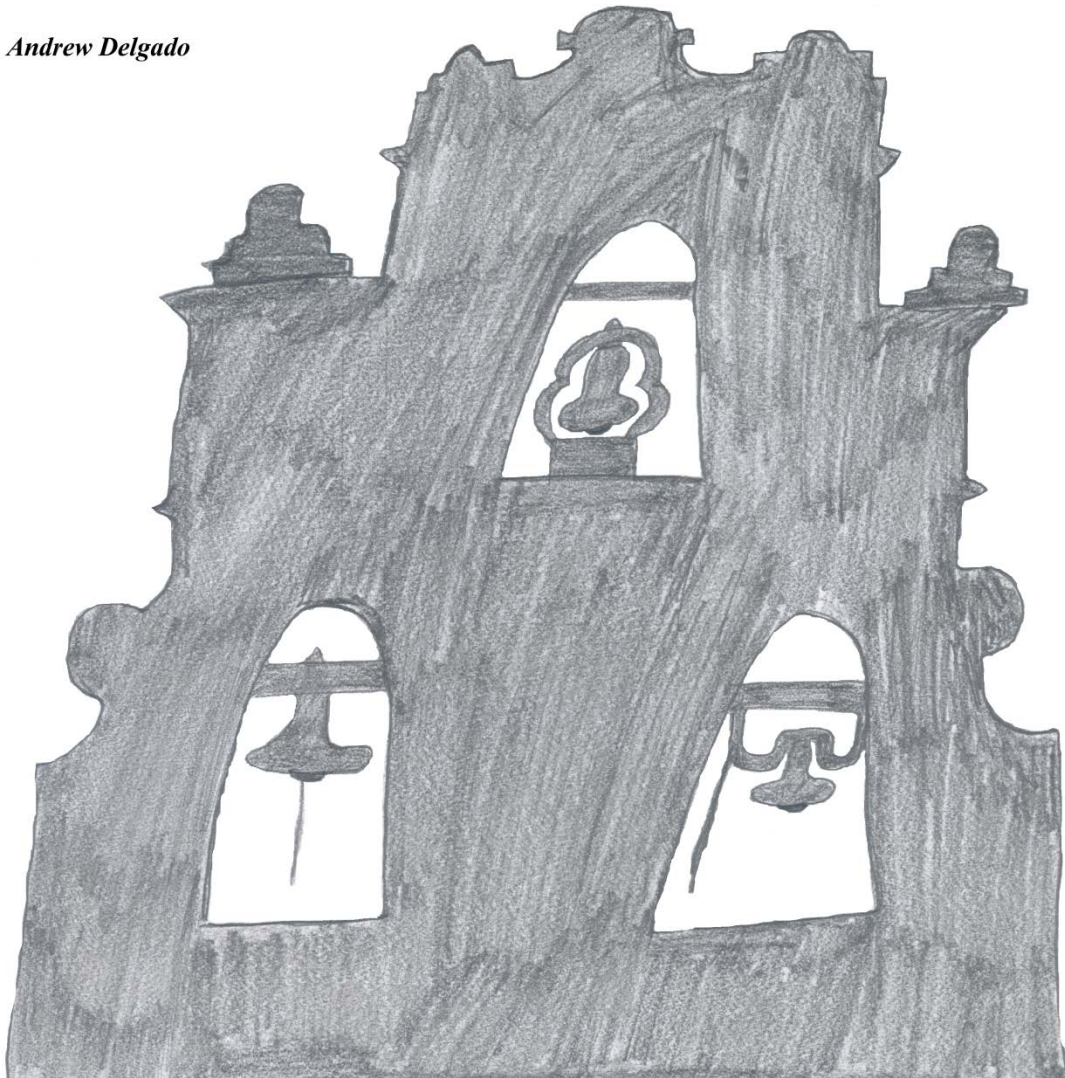

TEXAS REGISTER

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Andrew Delgado



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

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov.

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-1216-GA

Requestor:

The Honorable Jo Anne Bernal
El Paso County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

Re: Assessment of civil or criminal court costs in juror contempt cases
under section 62.0141 of the Government Code (RQ-1216-GA)

Briefs requested by September 22, 2014

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

TRD-201404202
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 3, 2014



Opinions

Opinion No. GA-1078

The Honorable Dan Flynn
Chair, Select Committee on Transparency in State Agency Operations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768

Re: Whether section 361.0961 of the Texas Health and Safety Code
prohibits municipalities from adopting ordinances that ban plastic bags
(RQ-1189-GA)

S U M M A R Y

A court would likely conclude that a city ordinance prohibiting
or restricting single-use plastic bags is prohibited by subsection
361.0961(a)(1) of the Health and Safety Code if the city adopted the
ordinance for solid waste management purposes. Whether a specific
city's single-use plastic bag ordinance was adopted for such purposes
will require a factual inquiry that is beyond the scope of an attorney
general opinion.

A court would likely conclude that section 361.0961(a)(3) prohibits a
city from adopting an ordinance that assesses a fee on the sale or use
of a single-use plastic bag.

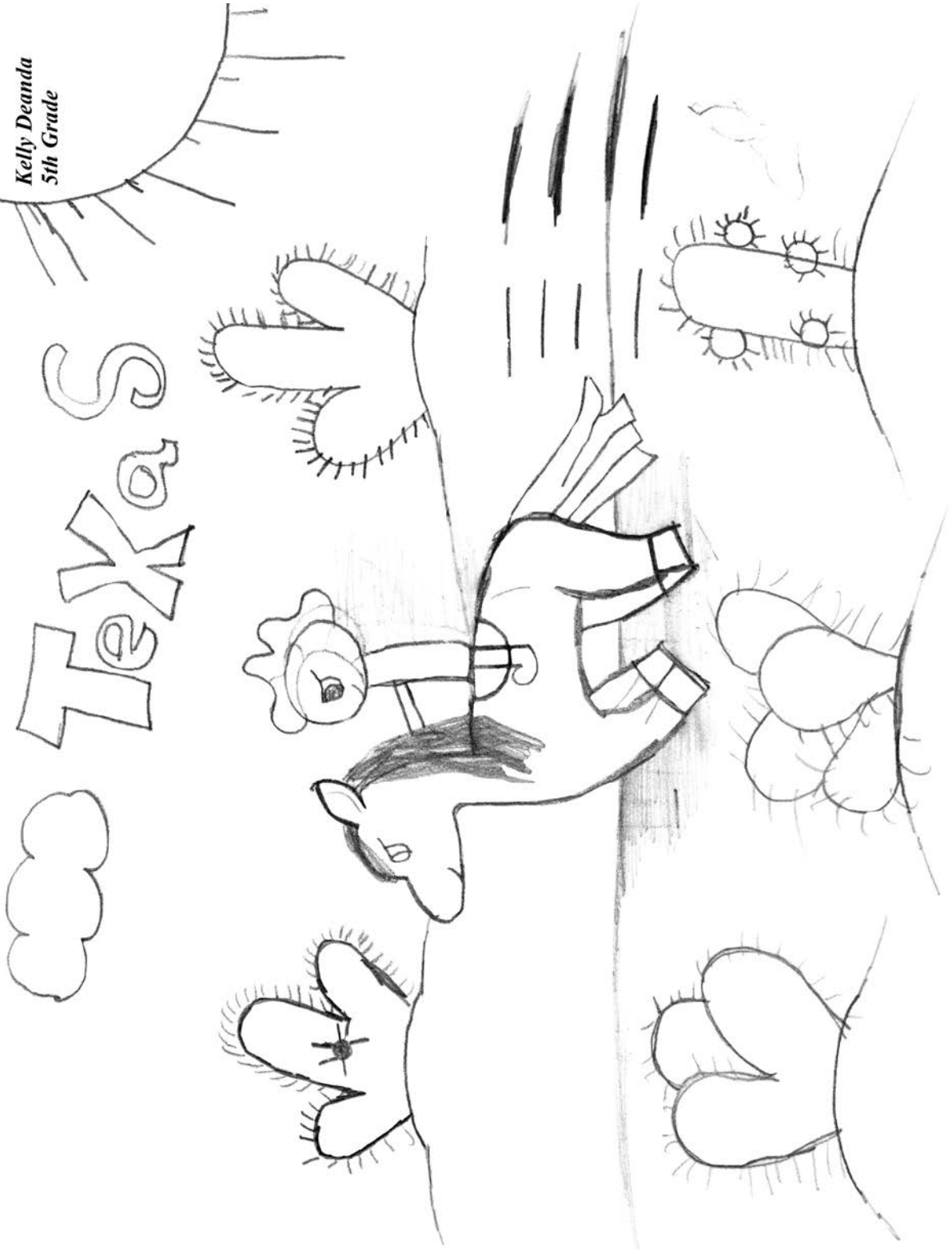
For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201404188
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 2, 2014



Kelly Deanda
5th Grade

☁ Texas



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §20.327

The Texas Ethics Commission (the commission) proposes an amendment to §20.327, relating to runoff reports.

Section 20.327 is being amended to reflect changes made by the legislature, which require a political committee involved in a runoff election to file a runoff report regardless of its involvement in the initial election.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mrs. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.327 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to rule §20.327 affects Election Code §254.124(e).

§20.327. *Runoff Report.*

(a) A specific-purpose committee that supports or opposes a candidate or measure in a [an election and in an ensuing] runoff election shall file a runoff report, except as provided by subsection (b) of this section.

(b) A specific-purpose committee that has declared an intention to file under the modified schedule in accordance with §20.329 of this title (relating to Modified Reporting) and that remains eligible to file under the modified schedule is not required to file a runoff report.

(c) A runoff report must be received by the authority with whom the report is required to be filed no later than the eighth day before the runoff election.

(d) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the 10th day before the runoff.

(e) For purposes of this section, supporting or opposing a candidate or a measure in an election means accepting political contributions or making political expenditures to support or oppose the candidate or measure.

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

Filed with the Office of the Secretary of State on August 25, 2014.

TRD-201404097

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: October 12, 2014

For further information, please call: (512) 463-5800



SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §20.427

The Texas Ethics Commission (the commission) proposes an amendment to §20.427, relating to runoff reports.

Section 20.427 is being amended to reflect changes made by the legislature, which require a political committee involved in a runoff election to file a runoff report regardless of its involvement in the initial election.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mrs. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.427 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to rule §20.427 affects Election Code §254.154(e).

§20.427. Runoff Report.

(a) A general-purpose committee that accepts political contributions or makes political expenditures to support or oppose a candidate or measure in a [an election and in an ensuing] runoff election shall file a runoff report, except as provided by §20.429 of this title (relating to Option To File Monthly).

(b) A runoff report must be received by the authority with whom the report is required to be filed no later than the eighth day before the runoff election.

(c) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the 10th day before the runoff.

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

Filed with the Office of the Secretary of State on August 25, 2014.

TRD-201404098

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: October 12, 2014

For further information, please call: (512) 463-5800



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to §§231.3, 231.9, 231.15, 231.17, 231.21, 231.23, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, and 231.73, concerning requirements for public school personnel assignments. The sections establish prekindergarten-Grade 6 and Grades 6-8 assignments. The proposed amendments to 19 TAC Chapter 231, Subchapters B and C, would add the new Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 certificates to every assignment that currently includes the Generalist: Early Childhood-Grade 6 and/or Generalist: Grades 4-8 certificates as an appropriate credential for placement in a particular teaching assignment.

Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, provides guidance to school districts with regard to the certificates required for specific assignments of public school educators with corresponding certificates for each assignment for ease of use by school district personnel.

The proposed amendments to 19 TAC Chapter 231, Subchapters B and C, would add the new Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 certificates to all appropriate classroom assignments.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

Ryan Franklin, acting associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be updated requirements relating to the assignment of educators in Texas public schools. There are no costs to persons required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, acting associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER B. PREKINDERGARTEN- GRADE 6 ASSIGNMENTS

19 TAC §§231.3, 231.9, 231.15, 231.17, 231.21, 231.23, 231.27

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.3. *General Education, Prekindergarten.*

(a) All-level certification in art, health education, music, physical education, speech communication and theatre arts, or theatre may be assigned to teach in the certified area(s) in Prekindergarten-Grade 12.

(b) An assignment for General Education, Prekindergarten, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 4.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Core Subjects: Early Childhood-Grade 6.

(4) [(3)] Early Childhood Education (Prekindergarten and Kindergarten).

(5) [(4)] Elementary--General.

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(6) [(5)] Elementary--General (Grades 1-6).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(7) [(6)] Elementary--General (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(8) [(7)] Elementary Early Childhood Education (Prekindergarten-Grade 6).

(9) [(8)] Elementary Self-Contained (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(10) [(9)] English as a Second Language Generalist: Early Childhood-Grade 4.

(11) [(10)] English as a Second Language Generalist: Early Childhood-Grade 6.

(12) [(11)] Generalist: Early Childhood-Grade 4.

(13) [(12)] Generalist: Early Childhood-Grade 6.

(14) [(13)] Kindergarten.

(15) [(14)] Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics only).

(16) [(15)] Master Reading Teacher (Early Childhood-Grade 12) (Reading only).

(17) [(16)] Master Science Teacher (Early Childhood-Grade 4) (Science only).

(18) [(17)] Prekindergarten-Grade 5.

(19) [(18)] Prekindergarten-Grade 6.

(20) [(19)] Teacher of Young Children--General.

§231.9. *General Education, Kindergarten.*

(a) All-level certification in art, health education, music, physical education, speech communication and theatre arts, or theatre may be assigned to teach in the certified area(s) in Prekindergarten-Grade 12.

(b) An assignment for General Education, Kindergarten, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 4.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Core Subjects: Early Childhood-Grade 6.

(4) [(3)] Early Childhood Education (Prekindergarten and Kindergarten).

(5) [(4)] Elementary Early Childhood Education (Prekindergarten-Grade 6).

(6) [(5)] English as a Second Language Generalist: Early Childhood-Grade 4.

(7) [(6)] English as a Second Language Generalist: Early Childhood-Grade 6.

(8) [(7)] Generalist: Early Childhood-Grade 4.

(9) [(8)] Generalist: Early Childhood-Grade 6.

(10) [(9)] Kindergarten.

(11) [(10)] Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics only).

(12) [(11)] Master Reading Teacher (Early Childhood-Grade 12) (Reading only).

(13) [(12)] Master Science Teacher (Early Childhood-Grade 4) (Science only).

(14) [(13)] Prekindergarten-Grade 5--General.

(15) [(14)] Prekindergarten-Grade 6--General.

(16) [(15)] Teacher of Young Children--General.

§231.15. *Elementary, Grades 1-6.*

An assignment for Elementary, Grades 1-6, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Bilingual Generalist: Grades 4-8 (Grades 4-6 only).

(4) Core Subjects: Early Childhood-Grade 6.

(5) Core Subjects: Grades 4-8 (Grades 4-6 only).

(6) [(4)] Elementary--General.

(7) [(5)] Elementary--General (Grades 1-6).

(8) [(6)] Elementary--General (Grades 1-8).

(9) [(7)] Elementary Early Childhood Education (Prekindergarten-Grade 6).

(10) [(8)] Elementary Self-Contained (Grades 1-8).

(11) [(9)] English as a Second Language Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(12) [(10)] English as a Second Language Generalist: Early Childhood-Grade 6.

(13) [(11)] English as a Second Language Generalist: Grades 4-8 (Grades 4-6 only).

(14) [(12)] Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(15) [(13)] Generalist: Early Childhood-Grade 6.

(16) [(14)] Generalist: Grades 4-8 (Grades 4-6 only).

(17) [(15)] Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics in Grades 1-4 only).

(18) [(16)] Master Mathematics Teacher (Grades 4-8) (Mathematics in Grades 4-6 only).

(19) [(17)] Master Reading Teacher (Early Childhood-Grade 12) (Reading in Grades 1-6 only).

(20) [(18)] Master Science Teacher (Early Childhood-Grade 4) (Science in Grades 1-4 only).

(21) [(19)] Master Science Teacher (Grades 4-8) (Science in Grades 4-6 only).

(22) [(20)] Prekindergarten-Grade 5--General (Grades 1-5 only).

(23) [(21)] Prekindergarten-Grade 6--General.

(24) [(22)] Teacher of Young Children--General (Grades 1-3 only).

§231.17. *Reading, Grades 1-6.*

An assignment for Reading, Grades 1-6, is allowed with one of the following certificates.

(1) A teacher certificate that matches the subject and grade level of the assignment (Prekindergarten-Grade 6).

(2) An elementary teacher certificate appropriate for Grades 1-6 assignment.

(3) Bilingual Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(4) Bilingual Generalist: Early Childhood-Grade 6.

(5) Bilingual Generalist: Grades 4-8 (Grades 4-6 only).

(6) Core Subjects: Early Childhood-Grade 6.

(7) Core Subjects: Grades 4-8 (Grades 4-6 only).

(8) [(6)] English as a Second Language Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(9) [(7)] English as a Second Language Generalist: Early Childhood-Grade 6.

(10) [(8)] English as a Second Language Generalist: Grades 4-8 (Grades 4-6 only).

(11) [(9)] English Language Arts and Reading: Grades 4-8 (Grades 4-6 only).

(12) [(10)] English Language Arts and Reading/Social Studies: Grades 4-8 (Grades 4-6 only).

(13) [(11)] Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(14) [(12)] Generalist: Early Childhood-Grade 6.

(15) [(13)] Generalist: Grades 4-8 (Grades 4-6 only).

(16) [(14)] Master Reading Teacher (Early Childhood-Grade-12).

(17) [(15)] Reading Specialist.

(18) [(16)] Reading Specialist (Early Childhood-Grade 12).

§231.21. *Art, Prekindergarten-Grade 6.*

An assignment for Art, Prekindergarten-Grade 6, is allowed with one of the following certificates.

(1) A teacher certificate that matches the subject and grade level of the assignment (Prekindergarten-Grade 6).

(2) All-Level Art.

(3) All-Level Art (Prekindergarten-Grade 12).

(4) Art: Early Childhood-Grade 12.

(5) Bilingual Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(6) Bilingual Generalist: Early Childhood-Grade 6.

(7) Core Subjects: Early Childhood-Grade 6.

(8) [(7)] Early Childhood Education (Prekindergarten and Kindergarten only).

(9) [(8)] English as a Second Language Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(10) [(9)] English as a Second Language Generalist: Early Childhood-Grade 6.

(11) [(40)] Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(12) [(44)] Generalist: Early Childhood-Grade 6.

§231.23. *Music, Prekindergarten-Grade 6.*

An assignment for Music, Prekindergarten-Grade 6, is allowed with one of the following certificates.

(1) A teacher certificate that matches the subject and grade level of the assignment (Prekindergarten-Grade 6).

(2) All-Level Music.

(3) All-Level Music (Prekindergarten-Grade 12).

(4) Bilingual Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(5) Bilingual Generalist: Early Childhood-Grade 6.

(6) Core Subjects: Early Childhood-Grade 6.

(7) [(6)] Early Childhood Education (Prekindergarten and Kindergarten only).

(8) [(7)] English as a Second Language Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(9) [(8)] English as a Second Language Generalist: Early Childhood-Grade 6.

(10) [(9)] Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(11) [(40)] Generalist: Early Childhood-Grade 6.

(12) [(44)] Music: Early Childhood-Grade 12.

§231.27. *Physical Education, Prekindergarten-Grade 6.*

An assignment for Physical Education, Prekindergarten-Grade 6, is allowed with one of the following certificates.

(1) A teacher certificate that matches the subject and grade level of the assignment (Prekindergarten-Grade 6).

(2) All-Level Physical Education.

(3) All-Level Health and Physical Education.

(4) An elementary teacher certificate appropriate for Prekindergarten-Grade 6 assignment.

(5) Bilingual Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(6) Bilingual Generalist: Early Childhood-Grade 6.

(7) Core Subjects: Early Childhood-Grade 6.

(8) [(7)] Early Childhood Education (Prekindergarten and Kindergarten only).

(9) [(8)] English as a Second Language Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(10) [(9)] English as a Second Language Generalist: Early Childhood-Grade 6.

(11) [(40)] Generalist: Early Childhood-Grade 4 (Early Childhood-Grade 4 only).

(12) [(44)] Generalist: Early Childhood-Grade 6.

(13) [(42)] Physical Education: Early Childhood-Grade 12.

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

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Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

19 TAC §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.41. *Self-Contained, Grades 6-8.*

(a) Self-contained is defined as a class in which one teacher teaches all or most subjects to one class of students.

(b) An assignment in a self-contained classroom for All General Subjects, Grades 6-8, is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(5) [(3)] Elementary--General.

(6) [(4)] Elementary--General (Grades 1-6) (Grade 6 only).

(7) [(5)] Elementary--General (Grades 1-8).

(8) [(6)] Elementary Early Childhood Education (Prekindergarten-Grade 6) (Grade 6 only).

(9) [(7)] Elementary Self-Contained (Grades 1-8).

(10) [(8)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(11) [(9)] English as a Second Language Generalist: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(12) [(40)] Generalist: Early Childhood-Grade 6 (Grade 6 only).

(13) [(41)] Generalist: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(14) [(42)] Prekindergarten-Grade 6--General (Grade 6 only).

§231.43. *All General Subjects, Grade 6.*

(a) An assignment in a departmentalized classroom for All General Subjects, Grade 6, for a holder of a valid elementary level certificate is allowed with one of the following certificates.

(1) Any elementary teacher certificate appropriate for Grade 6.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Bilingual Generalist: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(4) Core Subjects: Early Childhood-Grade 6.

(5) Core Subjects: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(6) [(4)] English as a Second Language Generalist: Early Childhood-Grade 6.

(7) [(5)] English as a Second Language Generalist: Grades 4-8 (English, language arts, mathematics, science, and social studies only).

(8) [(6)] Generalist: Early Childhood-Grade 6.

(9) [(7)] Generalist: Grades 4-8 (English language arts, mathematics, science, and social studies only).

(b) Requirements for a holder of a secondary or all-level certificate in a departmentalized Grades 6-8 assignment are specified for each subject area in this subchapter.

§231.45. *English Language Arts, Grades 6-8.*

An assignment in a departmentalized classroom for English Language Arts, Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8.

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8.

(5) [(3)] Elementary English (Grades 1-8).

(6) [(4)] Elementary teacher certificate plus 18 semester credit hours in English.

(7) [(5)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(8) [(6)] English as a Second Language Generalist: Grades 4-8.

(9) [(7)] English Language Arts and Reading: Grades 4-8.

(10) [(8)] English Language Arts and Reading/Social Studies: Grades 4-8.

(11) [(9)] English Language Arts and Reading: Grades 7-12 (Grades 7 and 8 only).

(12) [(40)] English Language Arts and Reading: Grades 8-12 (Grade 8 only).

(13) [(41)] Generalist: Early Childhood-Grade 6 (Grade 6 only).

(14) [(42)] Generalist: Grades 4-8.

(15) [(43)] Grades 6-12 or Grades 6-8--English.

(16) [(44)] Grades 6-12 or Grades 6-8--English Language Arts, Composite.

(17) [(45)] Junior High School or High School--English.

(18) [(46)] Junior High School or High School--English Language Arts, Composite.

(19) [(47)] Secondary English (Grades 6-12).

(20) [(48)] Secondary English Language Arts, Composite (Grades 6-12).

(21) [(49)] Secondary or all-level teacher certificate plus 18 semester credit hours in English.

§231.49. *Reading (At or Above Grade Level), Grades 6-8.*

An assignment in a departmentalized classroom for Reading (at or above grade level), Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8.

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8.

(5) [(3)] Elementary English (Grades 1-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(6) [(4)] Elementary Reading (Grades 1-8).

(7) [(5)] Elementary teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(8) [(6)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(9) [(7)] English as a Second Language Generalist: Grades 4-8.

(10) [(8)] English Language Arts and Reading: Grades 4-8.

(11) [(9)] English Language Arts and Reading: Grades 7-12 (Grade 7 only).

(12) [(40)] English Language Arts and Reading: Grades 8-12 (Grade 8 only).

(13) [(41)] English Language Arts and Reading/Social Studies: Grades 4-8.

(14) [(42)] Generalist: Early Childhood-Grade 6 (Grade 6 only).

(15) [(43)] Generalist: Grades 4-8.

(16) [(44)] Junior High School or High School--English.

(17) [(45)] Junior High School or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(18) [(46)] Junior High School or High School--Reading.

(19) [(47)] Master Reading Teacher (Early Childhood-Grade 12).

(20) [(48)] Reading Specialist.

(21) [(49)] Reading Specialist (Early Childhood-Grade 12).

(22) [(20)] Secondary English (Grades 6-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(23) [(24)] Secondary English Language Arts, Composite (Grades 6-8). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(24) [(22)] Secondary Reading (Grades 6-8).

(25) [(23)] Secondary English (Grades 6-12). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(26) [(24)] Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(27) [(25)] Secondary Reading (Grades 6-12).

(28) [(26)] Secondary or all-level teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

§231.51. *Reading Improvement (One Year or More Below Grade Level), Grades 6-8.*

An assignment in a departmentalized classroom for Reading Improvement (one year or more below grade level), Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8.

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8.

(5) [(3)] Elementary English (Grades 1-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(6) [(4)] Elementary Reading (Grades 1-8).

(7) [(5)] Elementary teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(8) [(6)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(9) [(7)] English as a Second Language Generalist: Grades 4-8.

(10) [(8)] English Language Arts and Reading: Grades 4-8.

(11) [(9)] English Language Arts and Reading: Grades 7-12 (Grades 7 and 8 only).

(12) [(40)] English Language Arts and Reading: Grades 8-12 (Grade 8 only).

(13) [(44)] English Language Arts and Reading/Social Studies: Grades 4-8.

(14) [(42)] Generalist: Early Childhood-Grade 6 (Grade 6 only).

(15) [(43)] Generalist: Grades 4-8.

(16) [(44)] Grades 6-12 or Grades 6-8--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(17) [(45)] Grades 6-12 or Grades 6-8--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(18) [(46)] Grades 6-12 or Grades 6-8--Reading.

(19) [(47)] Junior High School or High School--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(20) [(48)] Junior High School or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(21) [(49)] Junior High School or High School--Reading.

(22) [~~(20)~~] Master Reading Teacher (Early Childhood-Grade 12).

(23) [~~(21)~~] Reading Specialist.

(24) [~~(22)~~] Reading Specialist (Early Childhood-Grade 12).

(25) [~~(23)~~] Secondary English (Grades 6-12). This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(26) [~~(24)~~] Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(27) [~~(25)~~] Secondary Reading (Grades 6-12).

(28) [~~(26)~~] Teacher certificate plus 9 semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

§231.57. *Social Studies, Grade 6.*

An assignment in a departmentalized classroom for Social Studies, Grade 6, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Any elementary teacher certificate appropriate for Grade 6.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Bilingual Generalist: Grades 4-8.

(4) Core Subjects: Early Childhood-Grade 6.

(5) Core Subjects: Grades 4-8.

(6) [~~(4)~~] English as a Second Language Generalist: Early Childhood-Grade 6.

(7) [~~(5)~~] English as a Second Language Generalist: Grades 4-8.

(8) [~~(6)~~] English Language Arts and Reading/Social Studies: Grades 4-8.

(9) [~~(7)~~] Generalist: Early Childhood-Grade 6.

(10) [~~(8)~~] Generalist: Grades 4-8.

(11) [~~(9)~~] Grades 6-12 or Grades 6-8--Economics.

(12) [~~(10)~~] Grades 6-12 or Grades 6-8--Geography.

(13) [~~(11)~~] Grades 6-12 or Grades 6-8--Government.

(14) [~~(12)~~] Grades 6-12 or Grades 6-8--History.

(15) [~~(13)~~] Grades 6-12 or Grades 6-8--Psychology.

(16) [~~(14)~~] Grades 6-12 or Grades 6-8--Sociology.

(17) [~~(15)~~] Grades 6-12 or Grades 6-8--Social Studies.

(18) [~~(16)~~] Grades 6-12 or Grades 6-8--Social Studies, Composite.

(19) [~~(17)~~] Junior High School or High School--Anthropology.

(20) [~~(18)~~] Junior High School or High School--Economics.

(21) [~~(19)~~] Junior High School or High School--Geography.

(22) [~~(20)~~] Junior High School or High School--Government-Political Science.

(23) [~~(21)~~] Junior High School or High School--History.

(24) [~~(22)~~] Junior High School or High School--Psychology.

(25) [~~(23)~~] Junior High School or High School--Sociology.

(26) [~~(24)~~] Junior High School or High School--Social Science, Composite.

(27) [~~(25)~~] Secondary Economics (Grades 6-12).

(28) [~~(26)~~] Secondary Geography (Grades 6-12).

(29) [~~(27)~~] Secondary Government (Grades 6-12).

(30) [~~(28)~~] Secondary History (Grades 6-12).

(31) [~~(29)~~] Secondary Psychology (Grades 6-12).

(32) [~~(30)~~] Secondary Sociology (Grades 6-12).

(33) [~~(31)~~] Secondary Social Studies (Grades 6-12).

(34) [~~(32)~~] Secondary Social Studies, Composite (Grades 6-12).

(35) [~~(33)~~] Secondary or all-level teacher certificate plus 18 semester credit hours in social studies.

(36) [~~(34)~~] Social Studies: Grades 4-8.

§231.59. *Social Studies, Grades 7 and 8.*

An assignment in a departmentalized classroom for Social Studies, Grades 7 and 8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Grades 4-8.

(2) Core Subjects: Grades 4-8.

(3) [~~(2)~~] Elementary History.

(4) [~~(3)~~] Elementary History (Grades 1-8).

(5) [~~(4)~~] Elementary Social Studies (Grades 1-8).

(6) [~~(5)~~] Elementary teacher certificate plus 18 semester credit hours in social studies.

(7) [~~(6)~~] English as a Second Language Generalist: Grades 4-8.

(8) [~~(7)~~] English Language Arts and Reading/Social Studies: Grades 4-8.

(9) [~~(8)~~] Generalist: Grades 4-8.

(10) [~~(9)~~] Grades 6-12 or Grades 6-8--History.

(11) [~~(10)~~] Grades 6-12 or Grades 6-8--Social Studies.

(12) [~~(11)~~] Grades 6-12 or Grades 6-8--Social Studies, Composite.

(13) [~~(12)~~] High School--History.

(14) [~~(13)~~] High School--Social Science, Composite.

(15) [~~(14)~~] History: Grades 7-12.

(16) [~~(15)~~] History: Grades 8-12 (Grade 8 only).

- (17) [(46)] Junior High School or High School--History.
- (18) [(47)] Junior High School or High School--Social Science, Composite.
- (19) [(48)] Secondary History (Grades 6-12).
- (20) [(49)] Secondary Social Studies (Grades 6-12).
- (21) [(20)] Secondary Social Studies, Composite (Grades 6-12).
- (22) [(24)] Secondary or all-level teacher certificate plus 18 semester credit hours in social studies.
- (23) [(22)] Social Studies: Grades 4-8.
- (24) [(23)] Social Studies: Grades 7-12.
- (25) [(24)] Social Studies: Grades 8-12 (Grade 8 only).

§231.61. *Mathematics, Grades 6-8.*

An assignment in a departmentalized classroom for Mathematics, Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (2) Bilingual Generalist: Grades 4-8.
- (3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Grades 4-8.
- (5) [(3)] Elementary Mathematics (Grades 1-8). A teacher holding an Elementary Mathematics (Grades 1-8) certificate may teach Algebra I at the middle school level for high school graduation credit.
- (6) [(4)] Elementary teacher certificate plus 18 semester credit hours in mathematics.
- (7) [(5)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (8) [(6)] English as a Second Language Generalist: Grades 4-8.
- (9) [(7)] Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (10) [(8)] Generalist: Grades 4-8.
- (11) [(9)] Grades 6-12 or Grades 6-8--Mathematics.
- (12) [(10)] Junior High School or High School--Mathematics.
- (13) [(11)] Junior High School or High School--Mathematical Science, Composite.
- (14) [(12)] Master Mathematics Teacher (Grades 4-8).
- (15) [(13)] Master Mathematics Teacher (Grades 8-12) (Grade 8 only).
- (16) [(14)] Mathematics: Grades 4-8. A teacher holding a Mathematics: Grades 4-8 certificate may teach Algebra I at the middle school level for high school graduation credit.
- (17) [(15)] Mathematics: Grades 7-12 (Grades 7 and 8 only).
- (18) [(16)] Mathematics: Grades 8-12 (Grade 8 only).
- (19) [(17)] Mathematics/Physical Science/Engineering: Grades 6-12.

- (20) [(18)] Mathematics/Physical Science/Engineering: Grades 8-12 (Grade 8 only).
- (21) [(19)] Mathematics/Science: Grades 4-8.
- (22) [(20)] Physics/Mathematics: Grades 7-12 (Grades 7 and 8 only).
- (23) [(21)] Physics/Mathematics: Grades 8-12 (Grade 8 only).
- (24) [(22)] Secondary Mathematics (Grades 6-12).
- (25) [(23)] Secondary or all-level teacher certificate plus 18 semester credit hours in mathematics.

§231.63. *Science, Grade 6.*

An assignment in a departmentalized classroom for Science, Grade 6, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

- (1) Any elementary teacher certificate appropriate for Grade 6.
- (2) Bilingual Generalist: Early Childhood-Grade 6.
- (3) Bilingual Generalist: Grades 4-8.
- (4) Core Subjects: Early Childhood-Grade 6.
- (5) Core Subjects: Grades 4-8.
- (6) [(4)] English as a Second Language Generalist: Early Childhood-Grade 6.
- (7) [(5)] English as a Second Language Generalist: Grades 4-8.
- (8) [(6)] Generalist: Early Childhood-Grade 6.
- (9) [(7)] Generalist: Grades 4-8.
- (10) [(8)] Grades 6-12 or Grades 6-8--Biology.
- (11) [(9)] Grades 6-12 or Grades 6-8--Chemistry.
- (12) [(10)] Grades 6-12 or Grades 6-8--Earth Science.
- (13) [(11)] Grades 6-12 or Grades 6-8--Life/Earth Science.
- (14) [(12)] Grades 6-12 or Grades 6-8--Physical Science.
- (15) [(13)] Grades 6-12 or Grades 6-8--Physics.
- (16) [(14)] Grades 6-12 or Grades 6-8--Science.
- (17) [(15)] Grades 6-12 or Grades 6-8--Science, Composite.
- (18) [(16)] Junior High School or High School--Biology.
- (19) [(17)] Junior High School or High School--Chemistry.
- (20) [(18)] Junior High School or High School--Earth Science.
- (21) [(19)] Junior High School or High School--Life/Earth Science.
- (22) [(20)] Junior High School or High School--Life/Earth Middle-School Science.
- (23) [(21)] Junior High School or High School--Physical Science.
- (24) [(22)] Junior High School or High School--Physics.
- (25) [(23)] Junior High School or High School--Science.

(26) [(24)] Junior High School or High School--Science, Composite.

(27) [(25)] Master Science Teacher (Grades 4-8).

(28) [(26)] Mathematics/Science: Grades 4-8.

(29) [(27)] Science: Grades 4-8.

(30) [(28)] Secondary Biology (Grades 6-12).

(31) [(29)] Secondary Chemistry (Grades 6-12).

(32) [(30)] Secondary Earth Science (Grades 6-12).

(33) [(31)] Secondary Life/Earth Science (Grades 6-12).

(34) [(32)] Secondary Physical Science (Grades 6-12).

(35) [(33)] Secondary Physics (Grades 6-12).

(36) [(34)] Secondary Science (Grades 6-12).

(37) [(35)] Secondary Science, Composite (Grades 6-12).

(38) [(36)] Secondary or all-level teacher certificate plus 18 semester credit hours in any combination of sciences.

§231.65. *Science, Grades 7 and 8.*

An assignment in a departmentalized classroom for Science, Grades 7 and 8, is allowed with one of the following certificates.

(1) Bilingual Generalist: Grades 4-8.

(2) Chemistry: Grades 7-12.

(3) Chemistry: Grades 8-12 (Grade 8 only).

(4) Core Subjects: Grades 4-8.

(5) [(4)] Elementary Biology.

(6) [(5)] Elementary Chemistry.

(7) [(6)] Elementary Earth Science.

(8) [(7)] Elementary Life/Earth Middle-School Science.

(9) [(8)] Elementary Physical Science.

(10) [(9)] Elementary Physics.

(11) [(10)] Elementary Biology (Grades 1-8).

(12) [(11)] Elementary Chemistry (Grades 1-8).

(13) [(12)] Elementary Earth Science (Grades 1-8).

(14) [(13)] Elementary Life/Earth Middle-School Science (Grades 1-8).

(15) [(14)] Elementary Physical Science (Grades 1-8).

(16) [(15)] Elementary Physics (Grades 1-8).

(17) [(16)] Elementary teacher certificate plus 18 semester credit hours in any combination of sciences.

(18) [(17)] English as a Second Language Generalist: Grades 4-8.

(19) [(18)] Generalist: Grades 4-8.

(20) [(19)] Grades 6-12 or Grades 6-8--Biology.

(21) [(20)] Grades 6-12 or Grades 6-8--Chemistry.

(22) [(21)] Grades 6-12 or Grades 6-8--Earth Science.

(23) [(22)] Grades 6-12 or Grades 6-8--Life/Earth Middle-School Science.

(24) [(23)] Grades 6-12 or Grades 6-8--Physical Science.

(25) [(24)] Grades 6-12 or Grades 6-8--Physics.

(26) [(25)] Grades 6-12 or Grades 6-8--Science.

(27) [(26)] Grades 6-12 or Grades 6-8--Science, Composite.

(28) [(27)] Junior High School or High School--Biology.

(29) [(28)] Junior High School or High School--Chemistry.

(30) [(29)] Junior High School or High School--Earth Science.

(31) [(30)] Junior High School or High School--Life/Earth Middle-School Science.

(32) [(31)] Junior High School or High School--Physical Science.

(33) [(32)] Junior High School or High School--Physics.

(34) [(33)] Junior High School or High School--Science.

(35) [(34)] Junior High School or High School--Science, Composite.

(36) [(35)] Life Science: Grades 8-12 (Grade 8 only).

(37) [(36)] Master Science Teacher (Grades 4-8).

(38) [(37)] Master Science Teacher (Grades 8-12) (Grade 8 only).

(39) [(38)] Mathematics/Physical Science/Engineering: Grades 6-12.

(40) [(39)] Mathematics/Physical Science/Engineering: Grades 8-12 (Grade 8 only).

(41) [(40)] Mathematics/Science: Grades 4-8.

(42) [(41)] Physical Science: Grades 6-12.

(43) [(42)] Physical Science: Grades 8-12 (Grade 8 only).

(44) [(43)] Physics/Mathematics: Grades 7-12.

(45) [(44)] Physics/Mathematics: Grades 8-12 (Grade 8 only).

(46) [(45)] Science: Grades 8-12 (Grade 8 only).

(47) [(46)] Science: Grades 4-8.

(48) [(47)] Science: Grades 7-12.

(49) [(48)] Science: Grades 8-12.

(50) [(49)] Secondary Biology (Grades 6-12).

(51) [(50)] Secondary Chemistry (Grades 6-12).

(52) [(51)] Secondary Earth Science (Grades 6-12).

(53) [(52)] Secondary Life/Earth Science (Grades 6-12).

(54) [(53)] Secondary Physical Science (Grades 6-12).

(55) [(54)] Secondary Physics (Grades 6-12).

(56) [(55)] Secondary Science (Grades 6-12).

(57) [(56)] Secondary Science, Composite (Grades 6-12).

(58) [(57)] Secondary or all-level teacher certificate plus 18 semester credit hours in any combination of sciences.

§231.67. *Health, Grades 6-8.*

An assignment in a departmentalized classroom for Health, Grades 6-8, is allowed with one of the following certificates.

- (1) All-Level Health and Physical Education.
- (2) All-Level Physical Education.
- (3) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (5) [(4)] Elementary Health.
- (6) [(5)] Elementary Health and Physical Education.
- (7) [(6)] Elementary Physical Education.
- (8) [(7)] Elementary Health (Grades 1-8).
- (9) [(8)] Elementary Health and Physical Education (Grades 1-8).
- (10) [(9)] Elementary Physical Education (Grades 1-8).
- (11) [(40)] Elementary teacher certificate plus 12 semester credit hours in health, mental health, consumer health, public health, biology, microbiology, anatomy, physiology, kinesiology, foods, nutrition, family relations, disease control and prevention, safety, drug abuse prevention, or coordinated health programs.
- (12) [(11)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (13) [(42)] Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (14) [(43)] Grades 6-12 or Grades 6-8--Health.
- (15) [(44)] Grades 6-12 or Grades 6-8--Physical Education.
- (16) [(45)] Health: Early Childhood-Grade 12.
- (17) [(46)] Junior High School or High School--Health.
- (18) [(47)] Junior High School or High School--Health and Physical Education.
- (19) [(48)] Junior High School or High School--Physical Education.
- (20) [(49)] Physical Education: Early Childhood-Grade 12.
- (21) [(20)] Secondary Health (Grades 6-12).
- (22) [(24)] Secondary Physical Education (Grades 6-12).
- (23) [(22)] Secondary or all-level teacher certificate plus 12 semester credit hours in health, mental health, consumer health, public health, biology, microbiology, anatomy, physiology, kinesiology, foods, nutrition, family relations, disease control and prevention, safety, drug abuse prevention, or coordinated health programs.

§231.69. *Physical Education, Grades 6-8.*

An assignment in a departmentalized classroom for Physical Education, Grades 6-8, is allowed with one of the following certificates.

- (1) All-Level Health and Physical Education.
- (2) All-Level Physical Education.
- (3) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

- (5) [(4)] Elementary Health and Physical Education.
- (6) [(5)] Elementary Physical Education.
- (7) [(6)] Elementary Physical Education (Grades 1-8).
- (8) [(7)] Elementary teacher certificate plus 12 semester credit hours in physical education, including safety and coordinated school health programs.
- (9) [(8)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (10) [(9)] Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (11) [(40)] Grades 6-12 or Grades 6-8--Physical Education.
- (12) [(11)] Junior High School or High School--Health and Physical Education.
- (13) [(42)] Junior High School or High School--Physical Education.
- (14) [(43)] Physical Education: Early Childhood-Grade 12.
- (15) [(44)] Secondary Physical Education (Grades 6-12).
- (16) [(45)] Secondary or all-level teacher certificate plus 12 semester credit hours in physical education, including safety and coordinated school health programs.

§231.71. *Art, Grades 6-8.*

An assignment in a departmentalized classroom for Art, Grades 6-8, is allowed with one of the following certificates.

- (1) All-Level Art.
- (2) Art: Early Childhood-Grade 12.
- (3) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (5) [(4)] Elementary Art (Grades 1-8).
- (6) [(5)] Elementary teacher certificate plus 18 semester credit hours in art.
- (7) [(6)] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (8) [(7)] Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) [(8)] Grades 6-12 or Grades 6-8--Art.
- (10) [(9)] Junior High School or High School--Art.
- (11) [(40)] Secondary Art (Grades 6-12).
- (12) [(11)] Secondary or all-level teacher certificate plus 18 semester credit hours in art.

§231.73. *Music, Grades 6-8.*

An assignment in a departmentalized classroom for Music, Grades 6-8, is allowed with one of the following certificates.

- (1) All-Level Music.

- (2) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (4) [~~3~~] Elementary Music.
- (5) [~~4~~] Elementary Music (Grades 1-8).
- (6) [~~5~~] Elementary teacher certificate plus 18 semester credit hours in music.
- (7) [~~6~~] English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (8) [~~7~~] Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) [~~8~~] Grades 6-12 or Grades 6-8--Music.
- (10) [~~9~~] Junior High School or High School--Music.
- (11) [~~10~~] Music: Early Childhood-Grade 12.
- (12) [~~11~~] Secondary Music (Grades 6-12).
- (13) [~~12~~] Secondary or all-level teacher certificate plus 18 semester credit hours in music.

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

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State Board for Educator Certification

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



CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1, 233.2, 233.6, 233.7, 233.13

The State Board for Educator Certification (SBEC) proposes amendments to §§233.1, 233.2, 233.6, 233.7, and 233.13, concerning categories of classroom teaching certificates. The sections contain the current classroom teaching certificates by category, grade level, and subject areas. The proposed amendment to 19 TAC §233.2 would add new certificates for Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 to be issued no earlier than January 1, 2015. The proposed amendments to 19 TAC §§233.2, 233.6, and 233.7 would add deadlines for completion and submission requirements for the last group of Generalist certificates the SBEC will issue. The proposed amendment to 19 TAC §233.13 would remove language relating to expiration of certain sections of the rule and, instead, would provide deadlines for completion and submission requirements for the last group of Agricultural Science and Technology: Grades 6-12 and Business Education: Grades 6-12 certificates the SBEC will issue. The proposed amendments to 19 TAC §233.1 and §233.13 would update administrative rule references.

The Texas Education Code (TEC), §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of edu-

cators. Sections 233.1, General Authority; 233.2, Generalist; 233.6, Bilingual Education; 233.7, English as a Second Language; and 233.13, Career and Technical Education (Certificates not requiring experience and preparation in a skill area), address the source of general authority for 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, and establish teaching assignment certificates for Generalist, Bilingual Education, English as a Second Language, and Career and Technical Education (Certificates not requiring experience and preparation in a skill area). The following changes would provide new grade level certifications.

In 19 TAC §233.1(h) and §233.13(c) and (d), language would be amended to update cross-references to assignments for holders of the certificates in 19 TAC Chapter 233 that are codified in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments. In addition, 19 TAC §233.13(e) and (g) would be amended to remove provisions for expiration of those sections of the rule and, instead, provide deadlines for completion and submission requirements for the last group of Agricultural Science and Technology: Grades 6-12 and Business Education: Grades 6-12 certificates the SBEC will issue.

In 19 TAC §233.2, language would be amended to establish new certificates for Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8. In addition, a deadline of August 31, 2017, for candidates to complete all requirements for issuance of the Generalist: Early Childhood-Grade 6 and Generalist: Grades 4-8 certificates and a deadline of October 30, 2017, for candidates and EPPs to submit completed applications to the TEA, would be added.

In 19 TAC §233.6(a) and (b) and §233.7(a) and (b), language would be added to establish a deadline of August 31, 2017, for candidates to complete all requirements for issuance of the Bilingual Generalist: Early Childhood-Grade 6, Bilingual Generalist: Grades 4-8, English as a Second Language Generalist: Early Childhood-Grade 6, and English as a Second Language Generalist: Grades 4-8 certificates and a deadline of October 30, 2017, for candidates and EPPs to submit completed applications to the TEA.

The proposed amendments would also include technical edits to update the section title and re-letter the subsections accordingly.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

Ryan Franklin, acting associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the continuation of guidelines for categories of classroom teaching certificates and clarification of the courses that can be taught by the holders of these certificates. There are no costs to persons required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, acting associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The proposed amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.048(a), 21.050, and 22.0831(f).

§233.1. *General Authority.*

(a) - (g) (No change.)

(h) The general assignment descriptions in this chapter are subject to the specific provisions for the assignment of a holder of a certificate in Chapter 231 [~~§231-1~~] of this title (relating to Requirements for [Criteria for Assignment of] Public School Personnel Assignments), and in the event of any conflict with this chapter, Chapter 231 [~~§231-1~~] of this title shall prevail.

§233.2. *Core Subjects: Generalist.*

(a) Core Subjects: Early Childhood-Grade 6. The Core Subjects: Early Childhood-Grade 6 certificate may be issued no earlier than January 1, 2015. The holder of the Core Subjects: Early Childhood-Grade 6 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-6:

- (1) Art;
- (2) Health;
- (3) Music;
- (4) Physical Education;
- (5) English Language Arts and Reading;
- (6) Mathematics;
- (7) Science;
- (8) Social Studies;
- (9) Technology Applications; and
- (10) Theater.

(b) Core Subjects: Grades 4-8. The Core Subjects: Grades 4-8 certificate may be issued no earlier than January 1, 2015. The holder of the Core Subjects: Grades 4-8 certificate may teach the following content areas in Grades 4-8:

- (1) English Language Arts and Reading;
- (2) Mathematics;
- (3) Science; and
- (4) Social Studies.

(c) [~~(a)~~] Generalist: Early Childhood-Grade 6. The Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. A candidate must meet the requirements for a Generalist: Early Childhood-Grade 6 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017. The holder of the Generalist: Early Childhood-Grade 6 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-6:

- (1) Art;
- (2) Health;
- (3) Music;
- (4) Physical Education;
- (5) English Language Arts and Reading;
- (6) Mathematics;
- (7) Science;
- (8) Social Studies;

- (9) Technology Applications; and
- (10) Theater.

(d) [(b)] Generalist: Grades 4-8. The Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. A candidate must meet the requirements for a Generalist: Grades 4-8 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017. The holder of the Generalist: Grades 4-8 certificate may teach the following content areas in Grades 4-8:

- (1) English Language Arts and Reading;
- (2) Mathematics;
- (3) Science; and
- (4) Social Studies.

§233.6. *Bilingual Education.*

(a) Bilingual Generalist: Early Childhood-Grade 6. The Bilingual Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may teach in a bilingual prekindergarten program, a bilingual kindergarten program, and a bilingual program in Grades 1-6. The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may teach the same content areas, in either a bilingual or general education program, as the holder of the Generalist: Early Childhood-Grade 6 certificate may teach under §233.2(a) of this title (relating to Generalist). The holder of the Bilingual Generalist: Early Childhood-Grade 6 certificate may also teach in an English as a second language program in Early Childhood-Grade 6. A candidate must meet the requirements for a Bilingual Generalist: Early Childhood-Grade 6 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017.

(b) Bilingual Generalist: Grades 4-8. The Bilingual Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Bilingual Generalist: Grades 4-8 certificate may teach in a bilingual program in Grades 4-8. The holder of the Bilingual Generalist: Grades 4-8 certificate may teach the same content areas, in either a bilingual or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title. The holder of the Bilingual Generalist: Grades 4-8 certificate may also teach in an English as a second language program in Grades 4-8. A candidate must meet the requirements for a Bilingual Generalist: Grades 4-8 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(c) Bilingual Education Supplemental. The Bilingual Education Supplemental certificate may be issued no earlier than September 1, 2009. The holder of the Bilingual Education Supplemental certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the Bilingual Education Supplemental certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

(d) The State Board for Educator Certification shall determine the target languages for bilingual education certificates based on the student population in the Texas public schools.

§233.7. *English as a Second Language.*

(a) English as a Second Language Generalist: Early Childhood-Grade 6. The English as a Second Language Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach in an English as

a second language program in prekindergarten-Grade 6. The holder of the English as a Second Language Generalist: Early Childhood-Grade 6 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Early Childhood-Grade 6 certificate may teach under §233.2(a) of this title (relating to Generalist). A candidate must meet the requirements for an English as Second Language Generalist: Early Childhood-Grade 6 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2017.

(b) English as a Second Language Generalist: Grades 4-8. The English as a Second Language Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach in an English as a second language program in Grades 4-8. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title. A candidate must meet the requirements for an English as a Second Language Generalist: Grades 4-8 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(c) English as a Second Language Supplemental. The English as a Second Language Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Supplemental certificate may teach in an English as a second language program at the same grade levels and in the same content area(s) of the holder's base certificate.

§233.13. *Career and Technical Education (Certificates not requiring experience and preparation in a skill area).*

(a) Technology Education: Grades 6-12. The Technology Education: Grades 6-12 certificate may be issued no earlier than September 1, 2004. The holder of the Technology Education: Grades 6-12 certificate may teach all technology education courses in Grades 6-12.

(b) Family and Consumer Sciences, Composite: Grades 6-12. The Family and Consumer Sciences, Composite: Grades 6-12 certificate may be issued no earlier than September 1, 2004. The holder of the Family and Consumer Sciences, Composite: Grades 6-12 certificate may teach all family and consumer sciences courses in Grades 6-12.

(c) Human Development and Family Studies: Grades 8-12. The Human Development and Family Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Human Development and Family Studies: Grades 8-12 certificate may teach the specific courses in Grades 8-12 listed in Chapter 231 [~~§231.4~~] of this title (relating to Requirements for [~~Criteria for Assignment of~~] Public School Personnel Assignments).

(d) Hospitality, Nutrition, and Food Sciences: Grades 8-12. The Hospitality, Nutrition, and Food Sciences: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Hospitality, Nutrition, and Food Sciences: Grades 8-12 certificate may teach the specific courses in Grades 8-12 listed in Chapter 231 [~~§231.4~~] of this title.

(e) Agricultural Science and Technology: Grades 6-12. The Agricultural Science and Technology: Grades 6-12 certificate may be issued no earlier than September 1, 2005. The holder of the Agricultural Science and Technology: Grades 6-12 certificate is eligible to teach all agricultural science and technology courses in Grades 6-12. A candidate must meet the requirements for an Agricultural Science and Technology: Grades 6-12 certificate by August 31, 2017. All applications must be complete and received by the Texas Education Agency

(TEA) by October 30, 2017. [The provisions of this subsection shall expire on September 1, 2016.]

(f) Agriculture, Food, and Natural Resources: Grades 6-12. The Agriculture, Food, and Natural Resources: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Agriculture, Food, and Natural Resources: Grades 6-12 certificate is eligible to teach all agricultural science and technology courses in Grades 6-12.

(g) Business Education: Grades 6-12. The Business Education: Grades 6-12 certificate may be issued no earlier than November 8, 2006. The holder of the Business Education: Grades 6-12 certificate may teach all business education courses in Grades 6-12, excluding economics courses. A candidate must meet the requirements for a Business Education: Grades 6-12 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017. [The provisions of this subsection shall expire on September 1, 2016.]

(h) Business and Finance: Grades 6-12. The Business and Finance: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Business and Finance: Grades 6-12 certificate may teach all business and finance courses in Grades 6-12.

(i) Science, Technology, Engineering, and Mathematics: Grades 6-12. The Science, Technology, Engineering, and Mathematics: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Science, Technology, Engineering, and Mathematics: Grades 6-12 certificate may teach all science, technology, engineering, and mathematics cluster courses in Grades 6-12.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15, §249.16

The State Board for Educator Certification (SBEC) proposes amendments to §249.15 and §249.16, concerning disciplinary proceedings, sanctions, and contested cases. The sections establish provisions for disciplinary action by SBEC and eligibility of persons with criminal convictions for a certificate under Texas Occupations Code (TOC), Chapter 53. The proposed amendment to 19 TAC §249.15 would conform the section to the proposed amendments approved by the SBEC to 19 TAC Chapter 229, Accountability System for Educator Preparation Programs. The proposed amendment to 19 TAC §249.16 would

clarify that multiple statutory provisions provide the basis for certification actions based on criminal history.

Section 249.15 lists the various types of disciplinary actions that the SBEC may pursue against certified educators when satisfactory evidence exists. Section 249.16 provides the basis for certification actions based on criminal history respectively. Among other enumerated actions, §249.15 currently allows action to be taken by the SBEC when a certified educator has *willfully or recklessly* failed to provide information required to be provided by SBEC rule, including 19 TAC §229.3. The SBEC, at the May 2014 meeting, proposed changes to 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, that would remove the *willfully or recklessly* requirement when pursuing sanctions for failure to report required information. The proposed amendment to 19 TAC §249.15 would remove in subsection (b)(7) the *willfully or recklessly* limitation when pursuing these types of actions to align with the proposed amendment to Chapter 229.

In addition, references in subsection (b)(10) would be updated to reflect proposed changes to §249.16. The proposed amendment would also update the rule wording from *crimes* to *offenses* to align with statutory language.

The Texas Education Code (TEC), §21.060, and the TOC, §53.021, provide the SBEC authority to suspend, revoke, or disqualify the certification of an educator on the basis of a criminal conviction. Section 249.16 discusses these actions.

In October 2007, an Attorney General opinion was requested by the commissioner of education regarding whether a rule the SBEC proposed relating to certification eligibility of persons with criminal convictions was preempted by the TEC, §21.060. Subsequently, Attorney General Opinion No. GA-0614, issued April 7, 2008, ruled that the two provisions are nonexclusive. As a result, the SBEC amended 19 TAC §249.16 in 2009 to include subsection (d) to reflect that grounds for disciplinary action or denial of licensure under the TOC, Chapter 53, were cumulative of grounds and remedies under the TEC, §21.060.

Effective May 18, 2014, the SBEC last amended 19 TAC §249.16 to implement House Bill 798, 83rd Texas Legislature, Regular Session, 2013, which removed a licensing authority's power, under the TOC, to sanction or withhold certification for convictions of Class C misdemeanors unless the person is an applicant or holder of a license to possess a firearm and the misdemeanor crime was domestic violence as defined by 18 United States Code, §921. Class C misdemeanors are punishable only by a fine not to exceed \$500.

In discussions involving the most recent change to §249.16, it became clear that the section did not clearly differentiate between the varying sources of authority. The proposed amendment to 19 TAC §249.16 would add language clearly identifying the varying sources of authority under which the SBEC may pursue disciplinary actions based on criminal history, namely the TOC and the TEC.

In addition, the proposed amendment would remove language in subsection (a) regarding the requirement that an offense be directly related to the duties and responsibilities of the education profession because it is redundant of the proposed language that offers a more complete definition in subsection (c).

The proposed amendment to subsection (b) would provide better language indicating that it is limited to actions pursued under the TOC.

The proposed amendment to subsection (c) would define which offenses directly relate to the duties and responsibilities of the education profession and would change references from *crimes* to *offenses* to match statutory language.

The proposed amendment to subsection (d) would provide clarifying language for how this subsection would work in conjunction with proposed new subsection (f).

The proposed amendment to subsection (f) would provide clear notice that SBEC will follow the procedures and timelines set out by that provision when pursuing actions under the TEC, §21.058.

The proposed amendment would also update the title to §249.16 to reference criminal history rather than criminal convictions and to incorporate the TEC, Chapter 21, along with the TOC, Chapter 53, as authority for certification actions.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no locally maintained paperwork requirements.

Ryan Franklin, acting associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be clarification of the conduct that may result in a disciplinary action. There are no additional costs to persons required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, acting associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.058(a) and (b), which provide for the revocation of educator certificates based on conviction of certain offenses; and §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to

the duties and responsibilities of the education profession; and the Texas Occupations Code (TOC), §53.021, which provides licensing authorities, in this instance SBEC, the authority to revoke, suspend, or deny a license; and §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53.

The proposed amendments implement the TEC, §§21.041(b)(1), (7), and (8), 21.058(a) and (b), and 21.060; and TOC, §53.021 and §53.025.

§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

- (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
- (2) issue an inscribed or non-inscribed reprimand;
- (3) suspend a certificate for a set term or issue a probated suspension for a set term;
- (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently; or
- (5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

- (1) the person has conducted school or education activities in violation of law;
- (2) the person is unworthy to instruct or to supervise the youth of this state;
- (3) the person has violated a provision of the Educators' Code of Ethics;
- (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006, and §249.14(d) and (e) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);
- (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
- (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
- (7) the person has [willfully or recklessly] failed to provide information required to be provided by SBEC rules, including, but not limited to, §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);
- (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);
- (9) the person has committed an act described in §249.14(h)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

- (A) any conduct constituting a felony criminal offense;
- (B) indecent exposure;
- (C) public lewdness;
- (D) child abuse and/or neglect;
- (E) possession of a weapon on school property;
- (F) drug offenses occurring on school property;
- (G) sale to or making alcohol or other drugs available to a student or minor;
- (H) sale, distribution, or display of harmful material to a student or minor;
- (I) certificate fraud;
- (J) state assessment testing violations;
- (K) deadly conduct; or
- (L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense [a crime] (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) [§249.16(b)] of this title (relating to Eligibility of Persons with Criminal History [Convictions] for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses [crimes] indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

- (A) offenses [crimes] involving moral turpitude;
- (B) offenses [crimes] involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
- (C) offenses [crimes] involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
- (D) offenses [crimes] involving school property or funds;
- (E) offenses [crimes] involving 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;
- (F) offenses [crimes] occurring wholly or in part on school property or at a school-sponsored activity; or
- (G) felony offenses [felonies] involving driving while intoxicated (DWI); or

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses.

(c) - (g) (No change.)

§249.16. Eligibility of Persons with Criminal History [Convictions] for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21.

(a) Pursuant to the Texas Occupations Code (TOC), Chapter 53, and the Texas Education Code (TEC), Chapter 21, Subchapter B [Chapter 22, Subchapter C], the State Board for Educator Certification (SBEC) may suspend or revoke an existing valid certificate, deny an applicant a certificate, [or] bar a person from being assessed or examined for a certificate, or take other disciplinary action because of a person's conviction of a felony or misdemeanor or certain other criminal history [if the crime directly relates to the duties and responsibilities of the education profession].

(b) Disciplinary action under the TOC, §53.021, [Subsection (a) of this section] does not apply to a person convicted only of an offense punishable as a Class C misdemeanor unless the person is an applicant for or the holder of a license that authorizes the person to possess a firearm and the person was convicted of the misdemeanor offense [crime] of domestic violence as defined by 18 United States Code, §921[; when the enforcement action is pursued under the authority granted through the Texas Occupations Code, Chapter 53].

(c) When statute or SBEC rule codified in the Texas Administrative Code, Title 19, Part 7, requires an offense to directly relate to the duties and responsibilities of the education profession, an offense is considered to directly relate if the offense [Subsection (a) of this section applies to a crime that] indicates a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Offenses [Crimes] considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:

- (1) offenses [crimes] involving moral turpitude;
- (2) offenses [crimes] involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
- (3) offenses [crimes] involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
- (4) offenses [crimes] involving school property or funds;
- (5) offenses [crimes] involving 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;
- (6) offenses [crimes] occurring wholly or in part on school property or at a school-sponsored activity; or
- (7) felony offenses [felonies] involving driving while intoxicated (DWI).

(d) Except as provided in subsection (f) of this section, the Texas Education Agency (TEA) staff, pursuant [Pursuant] to the TOC [Texas Occupations Code], Chapter 53, and the requirements of this chapter, [the Texas Education Agency (TEA) staff] shall notify the applicant or certificate holder in writing of the TEA staff's intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.

(e) The grounds for revoking or suspending a certificate provided by this section and the TOC [Texas Occupations Code], Chapter

53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.

(f) The TEC, §21.058, shall control actions pursued under that section.

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

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404154

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC Chapter 539, §§539.31, 539.51, 539.61 - 539.65, 539.81, 539.82, 539.91, 539.121, 539.137, 539.140, 539.150, 539.160 - 539.162, and 539.231, concerning Rules Relating to the Residential Service Company Act.

The proposed amendments to Chapter 539 are made following a comprehensive quadrennial rule review of Chapter 539 to better reflect current TREC procedures and to simplify and clarify where needed to improve readability. Section 539.140, Schedule of Administrative Penalties, was also revised to insert statutory provisions that were previously inadvertently omitted. Revised forms for the annual and mid-year reports, which are adopted by reference in §539.91 and §539.137 respectively, are also being proposed.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity and requirements that are easier to understand, apply, and process.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER D. DEFINITIONS

22 TAC §539.31

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.31. *Definitions [Residential Service Contract].*

(a) Act--Chapter 1303, Texas Occupation Code.

(b) Commission--The Texas Real Estate Commission.

(c) Residential Service Contract--A contract or agreement whereby a person, for a fee, undertakes to indemnify against or reimburse the costs of maintenance, repair, or replacement of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property is not a "residential service contract" within the meaning of the Residential Service Company Act, Texas Occupations Code, Chapter 1303 [(Act)], §1303.002(5).

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER F. AUTHORIZED PERSONNEL

22 TAC §539.51

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.51. *"Employed By" Defined.*

For the purposes of [Texas Occupations Code, Chapter 1303,] §1303.101(b) of the Act, a person is "employed by a residential service company" if the person is other than a licensed real estate salesperson, real estate broker, mobile home dealer, or insurance agent and is authorized by a licensed residential service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts subject to the following conditions.

(1) - (2) (No change.)

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

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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SUBCHAPTER G. APPLICATIONS AND MAINTENANCE OF LICENSE

22 TAC §§539.61 - 539.66

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.61. *Application for Residential Service Company License.*

(a) The [Texas Real Estate] Commission adopts by reference Application Form RSC 1-3 approved by the commission. This document is published by and available from the [Texas Real Estate] Commission at [] P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) The Commission [eommission] shall assign a license number to each residential service company licensed by the Commission [eommission].

§539.62. *Application to Approve Evidence of Coverage/ Schedule of Charges.*

(a) The [Texas Real Estate] Commission adopts by reference Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-2 approved by the Commission [eommission]. This document is published by and available from the [Texas Real Estate] Commission at [] P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) Each approved evidence of coverage shall be designated by a unique form number and include the Commission's [eommission's] approval date.

(c) A discount or any other change in any amount to be charged a consumer by a residential service company for coverage under a residential service contract is [econstitutes] a change to a schedule of charges previously approved by the Commission [eommission]. A residential service company must obtain the Commission's [eommission's] prior approval of a revised schedule of charges before offering the discount or other price reduction.

§539.63. *Termination of Application.*

An application for residential service company license or an application to approve evidence of coverage/schedule of charges will be terminated and the Commission [eommission] shall take no further action if the applicant fails to submit a response within three months [90 days] after the date the Commission [eommission] mails a request to the applicant for curative action.

§539.64. *Mailing Address and Other Contact Information.*

Each residential service company shall furnish a mailing address, telephone number and email address to the Commission [eommission] and shall report all subsequent changes not later than the 10th day [within

10 days] after the date of a change of any of the listed contact information on the form Notice of Modification, RSC 8-0. If the residential service company fails to update the mailing address, the last known mailing address provided to the Commission is [eommission will be deemed to be] the address of the residential service company. Failure to provide the information in a timely manner violates [econstitutes a violation of] §1303.352(a)(7) of the Act.

§539.65. *Change in Company Ownership or Officers.*

A residential service company shall report changes in its ownership or officers to the Commission [eommission] on the form Notice of Modification, RSC 8-0. Failure to provide the information in a timely manner violates [econstitutes a violation of] §1303.352(a)(7) of the Act.

§539.66. *Change in Operation.*

If a residential service company wishes to begin issuing and administering contracts in affiliation with another company, the residential service company shall give the Commission [eommission] no less than 30 days written notice before commencing such action. The residential service company shall also provide the Commission [eommission] with copies of any contract and any advertising to be issued or administered by the affiliate. All contracts issued or administered by an affiliate must clearly indicate the relationship between the residential service company and the affiliate. Failure to provide to the Commission [eommission] in a timely manner written notice of affiliation with another company, any contract or any advertising to be issued by the affiliate violates [econstitutes a violation of] §1303.352(a)(7) of the Act.

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER H. MISCELLANEOUS FORMS

22 TAC §539.71

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.71. *Miscellaneous Forms.*

The [Texas Real Estate] Commission adopts by reference the following forms approved by the Commission [eommission]. These forms are published and available from the [Texas Real Estate] Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(1) - (3) (No change.)

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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SUBCHAPTER I. FINANCIAL ASSURANCES

22 TAC §539.81, §539.82

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.81. *Funded Reserves.*

(a) Each residential service company licensed by the Commission [~~eommission~~] shall maintain funded reserves in the amount required by Subchapter D of the Act. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds, which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D, calculated based on all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be maintained in the following liquid assets only:

(1) - (2) (No change.)

(3) in other governmentally backed financial instruments acceptable to the Commission [~~eommission~~], provided prior permission is obtained.

(b) (No change.)

(c) The Commission [~~eommission~~] may suspend or revoke the license of a residential service company for failure to comply with this section.

§539.82. *Security.*

Each residential service company licensed by the Commission [~~eommission~~] shall maintain a security in the amount required by Subchapter D of the Act. Each residential service company shall confirm, by February 1 of each year, that the security required by §1303.154(b) of the Act is sufficient based on the amount of claims the residential service company paid in this state during the preceding calendar year. If the required amount of security is not sufficient, the residential service company shall take immediate steps to increase the amount of its security to meet the minimum security required and shall give the Commission [~~eommission~~] written notice of the increase and documentation evidencing the increase.

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER J. ANNUAL REPORT

22 TAC §539.91

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.91. *Annual Report.*

(a) The [~~Texas Real Estate~~] Commission adopts by reference the Annual Report Form RSC 6-5 [6-4] approved by the Commission [~~eommission~~]. This document is published by and available from the [~~Texas Real Estate~~] Commission, at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) (No change.)

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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SUBCHAPTER M. EXAMINATIONS

22 TAC §539.121

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.121. *Examinations.*

The Commission [~~eommission~~] shall examine the affairs of each licensed residential service company as the Commission [~~eommission~~] deems necessary, but no less than once every five years. A company's failure to provide access to the Commission [~~eommission~~] to the books and records of the company is a violation of [~~Texas Occupations Code, Chapter 1303,~~] §1303.053 of the Act, and may subject the company to the penalties provided in the Act [~~Chapter 1303~~].

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

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TRD-201404113

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER N. MID-YEAR REPORT

22 TAC §539.137

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.137. *Mid-Year Report.*

(a) The [Texas Real Estate] Commission adopts by reference Mid-Year Report Form RSC 7-4 [7-3] approved by the Commission [commission]. This document is published by and available from the [Texas Real Estate] Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) (No change.)

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER O. ADMINISTRATIVE PENALTIES

22 TAC §539.140

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.140. *Schedule of Administrative Penalties.*

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Act [of the Texas Occupations Code].

(b) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

(1) 22 TAC §539.137(b);

~~{(2) §1303.202(a);}~~

~~{(3) §1303.202(b);}~~

~~{(4) §1303.052; and}~~

(2) ~~{(5)}~~ §1303.352(a)(1);

(3) §1303.352(a)(7);

(4) 22 TAC §539.64;

(5) 22 TAC §539.65;

(6) 22 TAC §539.66; and

(7) 22 TAC §539.82.

(c) An administrative penalty range of \$500 - \$5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

(1) §1303.052

(2) ~~{(+)}~~ §1303.101;

(3) ~~{(-)}~~ §1303.151;

~~{(3) 22 TAC §539.81;}~~

(4) §1303.153;

(5) §1303.352(a)(2)-(6);

(6) §1303.202(a);

(7) §1303.202(b);

(8) §1303.052; and

(9) 22 TAC §539.81.

~~{(6) §1303.352(a)(3); and}~~

~~{(7) §1303.352(a)(6).}~~

(d) The Commission [commission] may assess an additional administrative penalty of up to two times that assessed under subsections (b) and (c) of this section if the residential service company has a history of previous violations.

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

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER P. COMPLAINTS

22 TAC §539.150

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.150. *Complaints.*

(a) (No change.)

(b) The Commission [~~eommission~~] shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) A residential service company shall provide information or documents requested by the Commission [~~eommission~~] or a Commission [~~eommission~~] representative in the course of the investigation of a complaint not later than the 10th day after the date the request is received [~~within 10 working days of receipt of the request~~].

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

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SUBCHAPTER Q. ISSUES AFFECTING CONSUMERS

22 TAC §§539.160 - 539.162

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.160. *Copy of Residential Service Company Contract.*

A residential service company is required to provide a contract holder a complete copy of each new or revised residential service contract not later than the 15th day [~~within 15 days~~] after the date payment is made or after the date the residential service contract becomes effective, whichever is sooner. Failure to provide the copy violates [~~constitutes a violation of~~] §1303.352(a)(7) of the Act. The residential service company may provide the copy of the evidence of coverage by U.S. mail, email or other means of delivery acceptable to the Commission [~~eommission~~].

§539.161. *Advertising.*

A residential service company violates [~~is subject to discipline under~~] §1303.352(a)(1) of the Act if it uses [~~utilizes~~] a side-by-side comparison in its advertising and the contracts being compared do not have substantially the same covered items and exclusions.

§539.162. *Contract Requirements.*

(a) Each residential service contract issued shall contain a statement substantially similar to the following: "This contract is issued by a Residential Service Company licensed by the Texas Real Estate Commission. Complaints about this contract or company may

be directed to the Texas Real Estate Commission at P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3049. The purchase of a residential service contract or home warranty contract is optional and similar coverage may be purchased from other residential service companies or insurance companies authorized to conduct business in Texas."

(b) A residential service company that limits its monetary liability of coverage in a residential service contract shall place the limiting language in a bold font.

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

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Kerri Lewis

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SUBCHAPTER X. FEES

22 TAC §539.231

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.231. *Fees.*

The Commission [~~eommission~~] shall charge and collect the following fees:

(1) - (4) (No change.)

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 2. RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER D. PROCEDURES FOR SPECIAL BOARD FOR REVIEW HEARINGS

UNDER SECTION 2267 OF THE TEXAS GOVERNMENT CODE

31 TAC §§2.51 - 2.60

The Texas General Land Office (GLO) proposes a new Subchapter D consisting of §§2.51 - 2.60, concerning the Procedures for Special Board of Review Hearings under Section 2267 of the Texas Government Code.

The GLO is proposing the new subchapter in response to Senate Bill 211, in which the 83rd Legislature directed the GLO to initiate procedures for conducting public hearings before the Special Board of Review, as defined in §2.52 of this subchapter (relating to Definitions), for projects to be developed under §2267 of the Texas Government Code.

Proposed new Subchapter D contains the following sections: new §2.51 concerns Applicability; new §2.52 concerns Definitions; new §2.53 concerns Applicability of Rules; new §2.54 concerns Requests for Board Hearings; new §2.55 concerns Notice; new §2.56 concerns Hearings; new §2.57 concerns a Quorum; new §2.58 concerns Orders of the Board; new §2.59 concerns Binding Effect of Orders and Development Plans; and new §2.60 concerns Time Periods.

Larry Laine, Chief Clerk and Deputy Commissioner of the GLO, has determined that for each year of the first five years the new sections are in effect, there will no fiscal implications for state or local government as a result of enforcing or administering the proposed new sections. Mr. Laine has determined that for each of the first five years following the adoption of the sections, the anticipated public benefit of the sections will be to provide procedures for conducting board hearings. Also Mr. Laine has determined that the proposed sections are not likely to have an adverse economic impact on micro-business or small business. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Written comments on the proposed sections must be submitted no later than 30 days from the date of this publication to Walter Talley, Legal Services, Texas General Land Office, at walter.talley@glo.texas.gov.

The new sections are proposed under Texas Government Code, Chapter 2267, §2267.0066(b), which provides the Commissioner of the General Land Office with the authority to promulgate rules for conducting a Special Board of Review Hearing.

Texas Government Code §2267 is affected by this proposed sections.

§2.51. Applicability.

These rules shall govern the procedures for conducting public hearings before the Special Board of Review, as defined in §2.52 of this subchapter (relating to Definitions), for projects to be developed under §2267 of the Texas Government Code.

§2.52. Definitions.

The following words, terms and phrases, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The special board of review consisting of the Commissioner of the General Land Office sitting as presiding officer; the mayor of the city or town within the corporate boundaries or extraterritorial jurisdiction of which the property is located, if the property is located within a city or town; the county judge of the county

within which the property is located; the executive director of the state entity that proposes to develop or operate the qualifying project; and a member appointed by the Governor.

(2) Development plan--A plan, promulgated by a state entity (as defined in this section) in accordance with Texas Government Code, §2267.006, to conserve and enhance the value of land belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the property is situated.

(3) Order--Official action by the Board with regard to a development plan.

(4) Property--Real property for which a development plan has been promulgated or adopted by a state entity (as defined in this section).

(5) Rezoning--Changing the existing zoning or land use regulation(s) applicable to the property.

(6) State Entity--The state entity that has promulgated or adopted a development plan in accordance with Texas Government Code, §2267.006.

§2.53. Applicability of Rules.

(a) The provisions of any rule referring to the Board shall be construed to apply to the members of the Board (including the presiding officer) if the matter is within the jurisdiction of the Board. Unless otherwise provided by law, a Board member or the presiding officer may delegate any duty imposed under Texas Government Code, §2267, or this subchapter to the duly authorized representative of the member or presiding officer. In such case, the provisions of any statute or rule referring to the Board member(s) or the presiding officer shall be construed to also apply to the duly authorized representative(s).

(b) The provisions of any rule referring to a development plan shall be construed to apply to any revision or modification of a development plan.

§2.54. Requests for Board Hearings.

(a) A state entity may request a Board hearing to:

(1) appeal the denial by a political subdivision of a request for rezoning, variance, or other relief in the state entity's development plan; and/or

(2) request the Board to adopt or revise a development plan.

(b) The state entity shall submit a hearing request in writing to the Board presiding officer and shall include in that request:

(1) the name, address, and telephone number of the presiding officer or executive director of the state entity making the hearing request;

(2) a concise statement of the facts and circumstances upon which Board review is requested;

(3) a concise statement of the specific relief sought; and

(4) a brief description of any emergency or urgent public necessity circumstances requiring an emergency hearing, as provided for in the Texas Open Meetings Act, Government Code, Chapter 551, §551.045.

(c) Within ten business days following receipt of such request, the Board presiding officer shall send copies of such request to all other Board members. Except as provided in subsection (d) of this section, if, after receiving such request, two or more Board members request a hearing by notice in writing to the Board presiding officer, a hearing shall be scheduled within 60 calendar days following the date the

Board members' hearing requests were received by the Board presiding officer.

§2.55. Notice.

(a) The Board shall provide notice of each hearing in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §551.045.

(b) At least 14 calendar days prior to a Board hearing, the Board shall provide written notice to all political subdivisions in which the property in question is located and to the appropriate central appraisal district.

§2.56. Hearings.

(a) The Board shall conduct one or more public hearings for any purpose set forth in §2.54(a) of this subchapter (relating to Requests for Board Hearings). If the property is located in more than one city or town, the hearing(s) on any single tract of land may be combined. At least one hearing shall be conducted in the county where the property is located. Any Board hearing shall be open to the public in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §551.045, and the Board shall conduct all hearings in accordance with this subchapter.

(b) Hearings of the Board are not contested case proceedings under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and shall not be subject to appeal under that chapter.

§2.57. Quorum.

A simple majority of the Board members constitutes a quorum with power to act in all cases.

§2.58. Orders of the Board.

If, after the hearing(s), the Board determines that local zoning requirements are detrimental to the best interest(s) of the State, the Board shall issue an order establishing a development plan to govern the use of the real property as provided in §2267 of the Texas Government Code. The Board may, in its order establishing a development plan, rezone the property and/or grant variances or other necessary relief from any rules, regulations, order or ordinances of a political subdivision. The Board shall issue its order in writing within 30 calendar days following the final hearing. Final orders, minutes of the hearing, and material submitted to the Board for consideration shall be open to the public in accordance with the Open Records Act, Government Code, Chapter 551, §551.045.

§ 2.59. Binding Effect of Orders and Development Plans.

(a) A development plan adopted by Board order shall be:

(1) final and binding on the State, its lessees, successors in interest and assigns, and affected local governments or political subdivisions, unless subsequently revised by the Board or as specifically provided in Texas Government Code, §2267.0067(c).

(2) filed in the deed records of the county in which the property is located.

(b) If the state entity does not receive a bid or auction solicitation for the property subject to the development plan, the state entity, at the direction of its executive director, may petition the Board to revise the development plan to conserve and enhance the value and marketability of the property.

(c) No local government, political subdivision, owner, builder, developer or any other person may revise or modify a development plan adopted by Board order, without specific approval by the Board, except as specifically provided in Texas Government Code, §2267.0067(c).

§2.60. Time Periods.

Unless otherwise expressed by the provisions of this subchapter, all time periods shall be calculated from the date on which a development plan or hearing request is filed with the political subdivision.

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

Filed with the Office of the Secretary of State on August 28, 2014.

TRD-201404140

Larry Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

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For further information, please call: (512) 475-1859



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.28, §217.40

The Texas Department of Motor Vehicles (department) proposes amendments to §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices; and §217.40, Marketing of Specialty License Plates through a Private Vendor.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are necessary to implement changes in specialty license plate pricing and the length of the terms to correspond with the recently renewed five-year contract with the department's vendor, License Plates of Texas, LLC (dba My Plates). The proposed changes are effective December 1, 2014.

Previously, the specialty license plates marketed through the vendor were offered for terms of one, five and ten years. Under the renewed contract, these plates are offered for terms of one, three and five years. Prices have also been adjusted to account for this change in the offered terms.

Transportation Code, Chapter 504, Subchapter J, gives the vendor authority to market its specialty plates by contract with the department, provided that all reasonable costs incurred by the department in connection with the specialty plates are recovered. The department cannot attest to the success of any marketing initiatives to be undertaken in the future by the vendor; however, no negative fiscal impact to the general revenue fund is anticipated based on the proposed price changes.

The proposed amendment to §217.40(g) provides that the vendor specialty license plates will be offered for a one-year, a three-year, or a five-year term.

The proposed amendments to §217.40(h) provide the associated fees under the one-year, three-year or five-year terms

for the various vendor specialty plate categories: custom license plates (§217.40(h)(1)); T-Plates (Premium) license plates (§217.40(h)(2)); luxury license plates (§217.40(h)(3)); freedom license plates (§217.40(h)(4)); and background only license plates (§217.40(h)(5)). In addition, the proposed amendment to §217.40(h)(7) provides that the vendor may auction alphanumeric patterns for one, three or five year terms with options to renew indefinitely at the current price established for a one, three or five year luxury category license plate.

Additionally, the proposed amendments to §217.40(i)(1) clarify that payment of specialty license plate fees are directly to the state through vendor and state systems, and the proposed amendments to §217.40(l)(2) clarify that the \$25 fee imposed on the transfer of auctioned specialty license plates between owners is to cover the cost of transfer.

Finally, the proposed amendment to §217.28(c)(7)(B) adds star symbols to the spaces, hyphens, periods, hearts, the International Symbol of Access, and the silhouettes of the State of Texas that may be used in conjunction with the alphanumeric characters on a personalized license plate.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no negative fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit of growing revenue to the state for the benefit of all Texans, is unchanged as a result of enforcing or administering the amendments. Because public participation in the specialty and personalized license plate program is voluntary, there are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 13, 2014.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the

Texas Department of Motor Vehicles under the Transportation Code; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which authorizes the department to adopt rules to implement and administer Chapter 504, License Plates; and more specifically, Transportation Code, §§504.851, 504.854, and 504.855, which authorize the board to establish fees for the transfer or issuance of the various vendor specialty and personalized plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §§504.002, 504.009, 504.101, 504.6011, 504.802, and 504.851 - 504.855.

§217.28. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapter 504 charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 504 charges the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.26 of this subchapter (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §217.22 of this subchapter (relating to Motor Vehicle Registration) who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is \$5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

- (A) County Judge;
- (B) Federal Administrative Law Judge;
- (C) State Judge;
- (D) State Official;
- (E) U.S. Congress--House;
- (F) U.S. Congress--Senate; and
- (G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicle, Classic Travel Trailer, and Custom Vehicles, Street Rods and Exhibition Vehicle.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

- (i) Antique Vehicle;
- (ii) Classic Travel Trailer;
- (iii) Rental Trailer;
- (iv) Travel Trailer;
- (v) Cotton Vehicle;
- (vi) Disaster Relief;
- (vii) Forestry Vehicle;
- (viii) Golf Cart;
- (ix) Log Loader; and
- (x) Military Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(a)(3) of this chapter (relating to Motor Vehicle Title) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.22(c)(4) of this subchapter as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of \$40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal

application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration

date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.22 of this subchapter unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates, Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO". Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Speaker of the House;
- (D) Attorney General;
- (E) Comptroller;
- (F) Land Commissioner;
- (G) Agriculture Commissioner;
- (H) Secretary of State;
- (I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

- (i) Judges of the Fifth Circuit Court of Appeals;
- (ii) Judges of the United States District Courts;
- (iii) United States Bankruptcy Judges; and
- (iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

- (i) Appellate District Courts;
- (ii) Presiding Judges of Administrative Regions;
- (iii) Judicial District Courts;
- (iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801 whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.40 of this subchapter (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the Board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The Board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the Board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the

additional information is not received by that date, the Board will return the application as incomplete unless the Board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The Board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.22(c)(4)(B) of this subchapter as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(7) Final approval.

(A) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the Board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §§551.403 or §551.404 are met;

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county;

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway; and

(4) The license plate fee for a golf cart license plate is \$10.

§217.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the Board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the Board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The Board will review vendor specialty license plate applications. The Board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.22(c)(4)(B) of this subchapter (relating to Motor Vehicle Registration) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period. [~~five-year, or ten-year period.~~]

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. [~~The fees for issuance of custom license plates are \$85 for one year, \$225 for five years, and \$325 for ten years.~~] Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are \$150 for one year, \$400 for three years, and \$450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. [~~T-Plates (Premium) license plates will be made available to coincide with extraordinary events of public interest to Texas registrants.~~] The fees for issuance of T-Plates (Premium) license plates are \$150 for one year, \$400 for three years, and \$450 for five years. [~~\$95 for one year until December 2, 2010; \$155 for one year on or after December 2, 2010; \$395 for five years; and \$495 for ten years.~~]

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are \$150 for one year, \$400 for three years, and \$450 for five years. [~~\$195 for one year, \$495 for five years, and \$595 for ten years.~~]

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are \$195 for one year, \$445 for three years, and \$495 for five years. [~~\$395 for one year, \$695 for five years, and \$795 for ten years.~~]

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are \$50 for one year,

\$130 for three years, and \$175 for five years. [\$55 for one year, \$195 for five years, and \$295 for ten years.]

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is \$40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five [~~10 or 25~~] year terms with options to renew indefinitely [~~; through 10 year terms;~~] at the current price established for a one, three, or five [~~10~~] year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is \$40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is \$40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to the county tax assessor-collector accompanied by the payment of a \$6 fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of \$25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector.

tor and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is \$50. [~~\$55~~.]

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

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404156

David D. Duncan

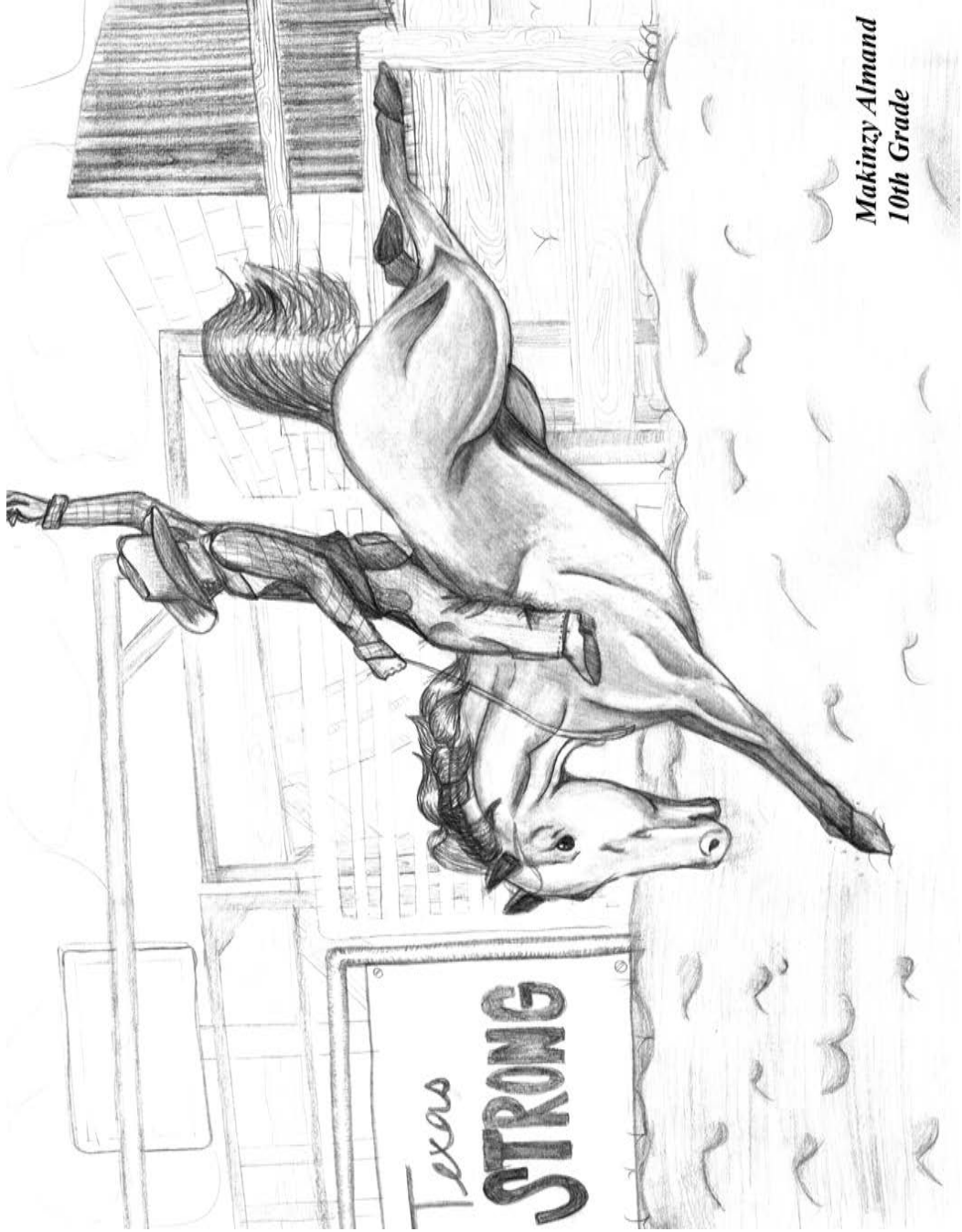
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 12, 2014

For further information, please call: (512) 465-5665





Makinzy Almand
10th Grade

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §229.9

The State Board for Educator Certification (SBEC) withdraws the proposed amendment to §229.9, concerning the accountability system for educator preparation programs (EPPs). Section 229.9 establishes fees for EPP approval and accountability. The proposal, which was published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4358), would have repealed §229.9(3) in order to delete the ten-year reapplication fee for an EPP approved after August 31, 2008.

At the August 2014 meeting, the SBEC took action to withdraw the proposed amendment to 19 TAC §229.9, Fees for Educator Preparation Program Approval and Accountability. The withdrawal would enable TEA staff to conduct a more thorough review and obtain stakeholder input to address the Sunset Commission's recommendation to revise fees associated with EPPs.

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404155

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

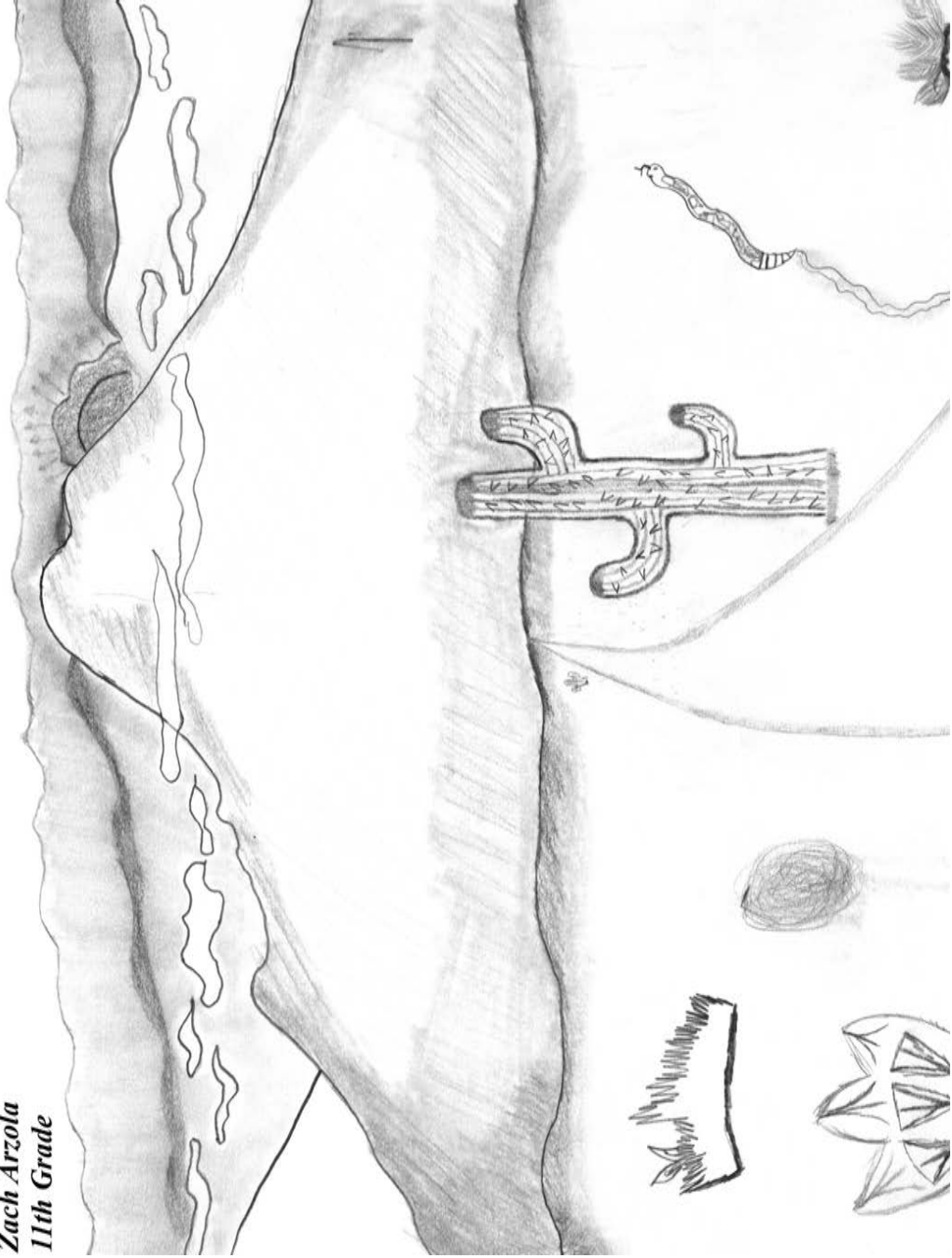
State Board for Educator Certification

Effective date: August 29, 2014

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



Zach Arzola
11th Grade



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.20

The Texas Ethics Commission (the commission) adopts an amendment to §20.20, timeliness of action by electronic filing. The amendment is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4551) and will not be republished.

The amendment is being made to expressly state that the filing deadline for reports filed electronically with the commission is midnight Central Time Zone.

The amendment will help commission filers who file required reports from a time zone other than the Central Time Zone.

No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

Filed with the Office of the Secretary of State on August 25, 2014.

TRD-201404096

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: September 14, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §352.17

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §352.17, concerning Out-of-State Medicaid Provider Eligibility, without changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5485) and will not be republished.

Background and Justification

The amendment revises the provider enrollment criteria to include provisions allowing the enrollment of out-of-state Medicaid providers who provide a medically necessary service that is otherwise unavailable or has limited availability within the state of Texas. The amendment also allows the enrollment of out-of-state providers for limited exceptions for good cause. Section references have been appropriately updated.

Comments

HHSC received comments from three interested parties during the 30-day comment period, which ended on August 18, 2014. All of the comments received were in opposition to the proposed rule amendment. These comments came from two Medicaid enrolled durable medical equipment (DME) providers, Longhorn Health Solutions and Travis Medical, and one concerned citizen. The comments, along with HHSC's responses, follow.

Comment: A commenter stated a belief that the rule amendments will adversely affect businesses within the state of Texas with insufficient benefit to Texas Medicaid clients. In the commenter's view, tax dollars will be going to businesses located out of the state when many businesses within the state are capable of providing needed services and have invested in in-state locations. The commenter asked, in this regard, whether in-state providers will be asked to provide service prior to approaching out-of-state providers.

Response: HHSC declines to revise the rule in response to this comment. HHSC believes that competition among providers will serve to decrease overall costs to the program while increasing the level of service to Medicaid clients, thus benefiting Medicaid clients. In response to the commenter's question, HHSC does not understand this to suggest a change to the rule. Out-of-state provider applications will be evaluated based on the requirements in the proposed rule amendment. Applications that do not meet the requirements as stated in rule will be denied enrollment. This means that applicants that are not providing medically necessary services that are limited or not readily available within the state or do not provide documentation showing that they meet one of the good cause exceptions will be denied.

Comment: A commenter expressed concern that the rule amendment may cause a higher incidence of waste, fraud, and abuse because it will be more difficult and costly for the Office

of Inspector General (OIG) to conduct site visits for out-of-state providers, especially in the DME industry.

Response: HHSC declines to revise the proposed rule in response to this comment. HHSC does not foresee that the rate of waste, fraud, and abuse will increase as the commenter suggests, but HHSC will of course monitor the situation. The Texas OIG maintains reciprocal agreements with other state's OIG staff. Thus, OIG activities and oversight can continue without undue burden or additional cost to the Texas taxpayers.

Comment: A commenter recommends that HHSC revise the proposed rule amendment to mandate that DME providers have a physical location in Texas in order to provide the DME benefit to Texas Medicaid recipients. The commenter suggests that having a physical location open to the public is necessary for Medicaid beneficiaries to have access to products and services.

Response: HHSC declines to revise the rule in response to this comment. While having a physical location or store front in the state is necessary for some services, some DME items and most medical supply services are shipped to the client's home by providers both within and outside of the state. Moreover, HHSC believes that competition among providers will serve to decrease overall costs to the program while increasing the level of service to Medicaid clients. HHSC will, however, consider the comment for possible future rule changes.

Comment: A comment suggests that out-of-state providers may be subject to alternative, less demanding enrollment requirements.

Response: HHSC does not understand the commenter to suggest a change to the rule. However, HHSC can assure the commenter that all requirements for enrollment and continued participation will apply to all Medicaid enrolled providers regardless of location.

Comment: A commenter suggests that the concept of "good cause" is ambiguous. The proposed rule amendment allows for the enrollment of out-of-state providers for limited good cause exceptions, but the commenter asks how good cause will be determined. The commenter asks other questions about the good cause determination.

Response: HHSC declines to revise the rule in response to this comment. All requirements for enrollment and continued participation will apply to all Medicaid enrolled providers regardless of location. The limited exceptions for good cause are detailed in subsection (b)(10)(A) and (b)(10)(B) as follows:

(b) An applicant or re-enrolling provider that is considered out-of-state under subsection (a) of this section is ineligible to participate in Medicaid unless HHSC or its designee approves the applicant or re-enrolling provider for enrollment on the basis of a determination that the applicant or re-enrolling provider has provided, is providing, or will provide services under one or more of the following criteria:

(10) The services are medically necessary and one or more of the following exceptions for good cause exist and can be documented:

(A) Texas Medicaid enrolled providers rely on the services provided by the applicant.

(B) Applicant maintains existing agreements as a participating provider through one or more Medicaid managed care organizations (MCO) and enrollment of the applicant leads to more cost-effective delivery of Medicaid services.

The applicant must provide documentation that clearly shows the existence of one of these circumstances. HHSC will provide specific operational guidelines for processing of these applications to the claims administrator responsible for processing enrollment applications. Documentation that is questionable will be sent to HHSC for a final determination. These exceptions are necessary to maintain appropriate access to all medically necessary services for all Medicaid clients.

Comment: A commenter asks about whether HHSC analyzed taxpayer savings for the rule amendment.

Response: HHSC does not understand this comment to be on the rule amendment, and the commenter does not suggest any revisions. HHSC performed all of the statutorily required analyses on the rule amendment. As HHSC stated in the preamble to the proposed rule, HHSC has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state or local governments, and there are no anticipated economic costs to persons who are required to comply with the rule. HHSC also has determined that there will be no adverse effect on small businesses or micro businesses.

Comment: A commenter asks why Medicaid managed care organizations are not negotiating with in-state vendors.

Response: HHSC does not understand this to be a comment on the rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

Filed with the Office of the Secretary of State on August 28, 2014.

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Jack Stick

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: July 18, 2014

For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN CERTIFICATION MARK

4 TAC §§17.51 - 17.53, 17.55

The Texas Department of Agriculture (TDA) adopts amendments to §§17.51, 17.53 and 17.55 without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4552). TDA adopts amended §17.52 with changes to the proposal. The amendments to §§17.51 - 17.53 and 17.55 clarify use of the GO TEXAN certification mark ("certification mark") by GO TEXAN program licensees.

The amendment to §17.51 adds a definition for "GO TEXAN program". The amendment to §17.52 provides requirements for use of the certification mark; the amendment also provides specific requirements regarding use of the certification mark by wine producers. The amendment to §17.53 clarifies the current rule, relating to action on application for use of the certification mark. The amendment to §17.55 adds responsibility for compliance with all requirements for use of the GO TEXAN certification mark. The amendments to §17.52, as adopted, do not change the criteria for eligibility to be a GO TEXAN member and do not change how members continue to use the GO TEXAN mark on general marketing materials. When using the GO TEXAN mark on wine product, the amendment does restrict GO TEXAN members to use the GO TEXAN mark only on wine products for which at least 75 percent of the grapes used are Texas-grown. This minimum percentage is based on other standard federal and industry-recognized thresholds for other origin requirements - such as for federally-approved appellation of origin label designations.

TDA sought input from stakeholders, including wineries, grape growers, wine consumers, package stores, and other individuals or entities with an interest in Texas' wine industry. No comments were received specifically on the proposed changes to §§17.51, 17.53, and 17.55. Comments on §17.52 were received from several wineries and constituents. Those in support of the rule believe it is a fair compromise from what was originally submitted by Andrew Chalk and they will continue to support the GO TEXAN program. One commenter supports the new standard and he believes it should be applied across the board for all Texas-made products.

One winery opposed the rule change and is concerned that eventually wine will not be allowed to be produced in Texas unless it conforms to the 75 percent rule. This rule change only affects the use of the GO TEXAN certification mark and how it can be used on wine labels, bottles and corks. TDA is not in favor of restricting the production of wine in Texas, as it has a \$1.8 billion impact on the state's economy. Texas wineries and vineyards may use the GO TEXAN mark on the bottles of wine that meet the 75 percent rule for Texas fruit.

Another winery did not believe there was enough support for the rule change during the previous two comment periods concerning a 100 percent Texas grape requirement. While that winery is correct that there was not majority support for changing the rule to require 100 percent use of Texas grapes, there was a majority in favor of establishing some percentage threshold in order to use the GO TEXAN certification mark on wine labels (75 out of 114 comments).

One constituent was concerned that TDA was singling out the wine industry instead of applying this new criteria across the board to all products, such as coffee and beer. TDA is using this new wine rule as a pilot program. Over a 12-month period following the adoption of the rule, the department will measure success of the new requirements toward increased Texas grape value, decreased consumer confusion regarding the GO TEXAN mark, and increased consumption of wines produced from Texas grapes. The new requirement will be reevaluated at the end of

that 12-month period and changes to restrict the use of the GO TEXAN mark will be discussed at that time.

The amendments are adopted pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175.

§17.52. Application for Registration to Use the GO TEXAN Certification Mark.

(a) No person shall use, employ, adopt, or utilize the GO TEXAN certification mark, unless prior application for registration has been made to the department and permission has been granted. In addition to any other fee that may be assessed under this chapter, the department may assess a fee or royalty as described in §17.63 of this title (relating to Licensing of the GO TEXAN Certification Mark) for use of the GO TEXAN certification mark.

(b) Unless permission is otherwise granted by the department, the GO TEXAN certification mark may only be used by registrants in accordance with these rules and guidance which may be prescribed by the department from time to time to certify and promote the following Texas products:

(1) agricultural products produced in Texas;

(2) agricultural food products processed in Texas, regardless of origin, and unprocessed agricultural food products grown in Texas. A food service company, excluding restaurants, is not eligible for membership unless it processes a packaged product for resale, in which case, the mark may only be used to promote the specific program-eligible products. Food service companies may not use the mark to promote the approved business or its services in a manner that would mislead consumers to believe it was a GO TEXAN member;

(3) wine which is produced or processed in Texas, as defined in §17.51 of this chapter (relating to Definitions). Wine meeting this standard, but consisting of less than 75 percent Texas-grown fruit, may not use the GO TEXAN certification mark on the label, bottle or cork. GO TEXAN member wineries may continue to use the mark on their general marketing materials and participate in GO TEXAN promotions;

(4) Texas-grown nursery, floral, and forestry products;

(5) leather, textile, or apparel products approved by the department as being:

(A) composed of 50% or greater natural fibers derived from crops or livestock grown or raised within the State of Texas, the identity of the fibers having been preserved throughout processing so as to be verifiable by satisfactory documentation as having originated in Texas; or

(B) composed of 50% or greater natural fibers, regardless of where grown or raised, which have been processed into leather, textile, or apparel products within the State of Texas in a manner which substantially changes their form, and, if composed of natural fibers derived from crops or livestock grown or raised outside the State of Texas, the natural fibers must be of a type commercially produced within the State of Texas;

(6) horticulture product(s);

(7) meat(s). In order to be certified as "GO TEXAN", meat(s), applicants must meet the following criteria:

(A) Livestock or exotic animals must have been born, raised, fed, slaughtered and/or fabricated in Texas.

(B) For purposes of this paragraph, "fabricated" shall be defined as the process of taking a carcass and cutting the carcass into wholesale or retail cuts of meat.

(8) livestock or poultry feed(s), feed supplement(s) and pet food(s);

(9) fish, shellfish, or other aquatic species in their raw form or processed form;

(10) natural fiber(s);

(11) natural wood(s);

(12) processed food product(s);

(13) processed natural fiber and natural wood product(s);

(14) wildlife processed for food or by-products;

(15) equine species;

(16) Texas processed agricultural product(s);

(17) Texas restaurants as provided for in §17.60 of this title (relating to GO TEXAN Restaurant Program);

(18) other products produced, manufactured, constructed or created within the state; or processed within the state as described in §17.51 of this title; and

(19) wildlife services as described in §17.61 of this title (relating to GO TEXAN Wildlife Program).

(c) Applications submitted under this section shall be made in writing on a form prescribed by the department. Application forms shall be submitted to the Texas Department of Agriculture Marketing and International Trade Section at P.O. Box 12076, Austin, Texas 78711. An application may be requested by calling phone (512) 463-7624.

(d) Applications will not be processed without the required registration fee.

(e) Upon approval of the application, the department shall provide the registrant a certificate of registration, which is valid for one year and shall expire on the last day of the month corresponding to the license anniversary date. The department shall also provide copies of the mark, suitable for reproduction, upon request of the registrant.

(f) Other than the authorized use of the mark, no registrant shall use any statement of affiliation or endorsement by the State of Texas or the department in the selling, advertising, marketing, packaging, or other commercial handling of GO TEXAN products and services, or operation of GO TEXAN restaurants.

(g) Registrants shall indemnify and hold harmless the commissioner, the State of Texas, and the department for any claims, losses, or damages arising out of or in connection with that person's advertising, marketing, packaging, manufacture, or other commercial handling of GO TEXAN products and services, or the operation of restaurants.

(h) Any permission under the certificate of registration granted to a registrant to use the mark shall be nonexclusive and nontransferable for the products listed in the application.

(i) Registrants shall do nothing inconsistent with the ownership of the mark in the department, and all use of the mark by any registrant shall inure to the benefit of and be on behalf of the department. Further the registrants shall not have any right, title, or interest in the mark, other than the right to use the mark as authorized in accordance

with the certificate of registration. Registrants waive the right to attack the department's ownership, use of and permissions granted by the department associated with the mark.

(j) The nature and quality of the goods sold by registrants in connection with the mark shall conform to any standards which are set by the department. Registrants shall cooperate with the department by permitting reasonable inspection of the registrant's operation and promptly supplying the department with specimens of use of the mark upon request. Registrants shall not use the mark on goods sold or marketed as products from another country or state, or as products from a city or region outside of Texas, unless prior written authorization is received from the department.

(k) Registrants shall comply with all applicable laws and regulations and obtain all appropriate governmental approval pertaining to the selling, advertising, marketing, packaging, manufacturing, or other commercial handling of the products or operation of restaurants covered by the certification of registration.

(l) Registrants shall use the mark only in the form and manner, and with appropriate legends, as prescribed by the department.

(m) Registrant is responsible for strict compliance with current departmental guidance and regulations. Guidance is available on the GO TEXAN website (gotexan.org) and as provided by the department on occasion. Failure to meet all use requirements will result in the suspension or termination of use of the mark and GO TEXAN program license.

(n) The department shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the GO TEXAN certification mark. Failure to bring proceedings does not constitute a waiver of the department's rights and does not preclude all other available legal actions.

(o) The department shall consider in its evaluation of an applicant or registrant any information that could impair the department's efforts to promote the development of markets for Texas agriculture and other products. This includes whether the product may enhance the integrity and positive image of the program, including, but not limited to, a review of the applicant's criminal background, as authorized by applicable laws and regulations. Failure to promote the GO TEXAN program or compromising the image and integrity of the program will result in the denial or termination of the application or membership.

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

Filed with the Office of the Secretary of State on August 28, 2014.

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General Counsel

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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

**PART 4. TEXAS DEPARTMENT OF
LICENSING AND REGULATION**

CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.250

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 86, §86.250, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4078). The rule will not be republished.

The adopted amendment is necessary to provide greater flexibility and more choices for tow operators who are required to complete continuing education for the renewal of a tow operator license.

The amendment to §86.250 adds subsection (m) which approves the Strategic Highway Research Program 2 as an approved course available to tow operators.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4078). The deadline for public comments was June 30, 2014. The Department received comments from two interested parties regarding the proposed rules during the 30-day public comment period.

Public Comment: One commenter stated that many tow truck drivers do not have a driver license or insurance.

Department Response: The Department believes this comment is anecdotal because the licensing system is designed to confirm driver licenses and insurance policies prior to issuance of the initial license and the renewal of a tow operator's license.

Public Comment: Another commenter supports the amendment and believes it will benefit the tow truck drivers when assisting the first responders.

Department Response: The Department appreciates and agrees with this comment.

The amendment is adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 29, 2014.

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For further information, please call: (512) 463-8179



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

The Texas Education Agency (TEA) adopts new §§100.1001-100.1007, 100.1010, 100.1021, 100.1022, 100.1026, 100.1031, 100.1032, 100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1051, 100.1063, 100.1067, 100.1071, 100.1073, 100.1102-100.1105, 100.1111, 100.1112, 100.1131, 100.1133, 100.1151, 100.1155, 100.1205, 100.1207, 100.1211, 100.1213, 100.1215, and 100.1217; and the repeal of §§100.1011, 100.1021, 100.1022, 100.1031, and 100.1037, concerning charters. New §§100.1001-100.1004, 100.1007, 100.1021, 100.1026, 100.1031, 100.1032, and 100.1050 and the amendments to §§100.1015, 100.1017, 100.1033, 100.1041, 100.1063, 100.1067, 100.1071, and 100.1207 are adopted with changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5495). New §§100.1005, 100.1006, 100.1010, 100.1022, and 100.1052, the amendments to §§100.1023, 100.1025, 100.1035, 100.1043, 100.1045, 100.1047, 100.1051, 100.1073, 100.1102-100.1105, 100.1111, 100.1112, 100.1131, 100.1133, 100.1151, 100.1155, 100.1205, 100.1211, 100.1213, 100.1215, and 100.1217, and the repeal of §§100.1011, 100.1021, 100.1022, 100.1031, and 100.1037 are adopted without changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5495) and will not be republished. The sections establish requirements for open-enrollment charter schools. The adopted actions modify the existing rules to reflect changes in law made by Senate Bill (SB) 2, 83rd Texas Legislature, Regular Session, 2013, and to more closely match other existing statutory provisions.

From 1995 until September 1, 2013, the State Board of Education (SBOE) had the authority to adopt the charter guidelines and application documents and to grant open-enrollment charters, public senior college or university charters, and public junior college charters. Additionally, the SBOE had the authority to approve the annual charter school governance reporting form and optional charter provisions for purchasing and contracting.

SB 2, 83rd Texas Legislature, Regular Session, 2013, granted the commissioner of education the authority to approve the annual charter school governance reporting form and optional charter provisions for purchasing and contracting, as well as to establish and approve the contents of the request for application and the criteria by which charter schools will be awarded. Additionally, SB 2 gave the commissioner the authority to award up to 305 open-enrollment charters on a graduated basis by the year 2019 to eligible entities that are considered capable of carrying out the responsibilities of the charter, are likely to operate a school of high quality, have been nominated by the commissioner, and are not rejected by a majority of the members of the SBOE present and voting. SB 2 specifies that a member of the SBOE designated by the SBOE chair will work in coordination with the commissioner to investigate and evaluate charter applicant(s). TEC, §12.101, gives the SBOE the authority to veto or

take no action on the charter(s) the commissioner recommends for award.

The existing commissioner's rules in 19 TAC Chapter 100, Subchapter AA, adopted effective November 6, 2001, and last amended effective September 12, 2002, cover a wide range of issues related to open-enrollment charter schools. The rules are organized in divisions addressing related subject matter, as follows: Division 1, General Provisions; Division 2, Commissioner Action and Intervention; Division 3, Charter School Funding and Financial Operations; Division 4, Property of Open-Enrollment Charter Schools; Division 5, Charter School Governance; and Division 6, Charter School Operations.

The adopted revisions to 19 TAC Chapter 100, Subchapter AA, incorporate the requirements of SB 2 by adding new rules that include provisions relating to the application and selection procedures and criteria, optional provisions for contracting and purchasing, annual reports on open-enrollment charter governance, and performance frameworks. The adopted revisions also update and add new rules relating to standards for and the revocation and modification of the governance of an open-enrollment charter as well as the management of charter campuses following revocation, surrender, or expiration.

Additionally, the adopted revisions to 19 TAC Chapter 100, Subchapter AA, amend, repeal, and add new rules relating to charter renewals and amendments; compliance records on nepotism, conflicts of interest, and restrictions on serving; charter school funding and financial operations; property of open-enrollment charter schools; charter school governance; and charter school operations.

The following changes were made at adoption.

Definitions of *campus* and *site* were modified in §100.1001, Definitions. In addition, *high-performing charter* was replaced by *high-performing entity*.

Section 100.1002, Application and Selection Procedures and Criteria, was modified to allow applicants to submit missing information during the completion check, add parental and community opposition to the list of criteria the commissioner may consider when determining whether to grant an open-enrollment charter, clarify language referencing actions the SBOE may take, and change the beginning date of a charter contract from August 1 to the date the contract is signed by the commissioner.

Section 100.1007, Annual Report on Open-Enrollment Charter Governance, was modified to remove the street address of an individual's primary residence from the list of identifying information that must be submitted.

Language related to loans and lines of credits was modified in §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter. In addition, the minimum number of students that must be served to ensure financial viability was modified to reflect the original rule text. Other conforming changes were also made.

Section 100.1032, Standards for Discretionary Renewal, was modified to add an exemption for charters operating residential facilities and reduce the minimum number of students that must be served. Other clarifying edits were also made.

Section 100.1033, Charter Amendment, was modified to remove references to substantive and non-substantive amendments and clearly articulate the types of amendments and the timelines associated with each. Language was removed limiting the campus

expansion to opening in the school year directly following the submission of the campus expansion; new language was added to address a quality expansion amendment; and proposed §100.1033(c)(9)(A)(iii), adopted as §100.1033(b)(12)(A)(iii), was modified to read: "no charter campus has been identified for federal interventions in the most current report." In addition, the term *substantially similar* was removed from proposed §100.1033(c)(6), adopted as §100.1033(b)(8), and the word *campus* was removed from proposed §100.1033(c)(7)(B), adopted as §100.1033(b)(9)(B).

Section 100.1041, State Funding, was modified to provide clarification that all amendments to the charter, expansion and non-expansion, must be approved by the commissioner before the related activities are eligible for funding.

Section 100.1050, Disclosure of Financial Information, was modified to align with the requirement in Local Government Code, §140.005 and §140.006, to reflect the required posting of the annual financial statement.

Sections 100.1063, Use of Public Property by a Charter Holder; 100.1067, Possession and Control of the Public Property of a Former Charter Holder; and 100.1071, Real Property Held in Trust, were modified to remove certain proposed provisions related to public property.

Section 100.1207, Student Admission, was modified to clarify language related to establishing primary and secondary geographic boundaries.

Additional conforming and technical edits were made to §§100.1003, Application to Dropout Recovery Charters; 100.1004, Application to Public Senior College or University Charters and Public Junior College Charters; 100.1017, Application to Public Senior College or University Charters and Public Junior College Charters, 100.1021, Revocation and Modification of Governance of an Open-Enrollment Charter, 100.1026, Management of Charter Campus(es) Following Revocation, Surrender, or Expiration, and 100.1031, Renewal of an Open-Enrollment Charter.

The adopted rule actions have procedural and reporting requirements for charters. Charters are required to post the names of the members of the governing body of an open-enrollment charter and the salary of the charter superintendent or the chief operating officer on the school's Internet home page and submit evidence thereof to the TEA on the governance reporting form. Charters must also submit to the TEA an accounting of all employees employed by the school as of September 1, 2013, including the declaration of any nepotistic relationships. Pending the adoption of the Charter School Performance Framework Manual, charters may have nominal data to report annually.

The adopted rule actions may have additional locally maintained paperwork requirements. If not already maintained, additional reporting requirements may result in the need for charters to maintain additional personnel information.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 18, 2014, and ended August 18, 2014, and included a public hearing that was held on Friday, July 25, 2014. Following is a summary of the public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter

100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools.

§100.1001, Definitions.

Comment: Concerning §100.1001(11)(A), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed expressed concerns that the definition of property could be problematic for facilities purchased with privately raised dollars. The commenters stated that these facilities are often used as collateral for publicly purchased real estate and could then be considered state property.

Agency Response: The agency disagrees. This definition was not changed from the previous rule; it was only renumbered. Private property would not become public property unless state funds were used to acquire the property.

Comment: Concerning §100.1001(12)(C) and the definition of misuse or misapplication of funds or property, the Texas Charter Schools Association (TCSA) requested the deletion of any additional language beyond the definition in the Local Government Code for what constitutes a misuse or misapplication of funds or property. The TCSA added that the penalties under the Local Government Code concerning conflict of interests and purchasing and contracting are sufficient to address any violations of those laws and stated that the commissioner should not impose additional sanctions or penalties for violations of those laws solely upon charter schools using the rulemaking process.

Agency Response: The agency disagrees and has determined that the rule sufficiently describes the criteria for taking action by the applicable statutes in the Texas Education Code (TEC) and the Local Government Code.

Comment: Concerning §100.1001(13), Houston A+ Challenge requested clarification regarding the definition of management services and whether the current definition allows charter schools to contract services with external service providers. Houston A+ Challenge requested clarification regarding the definition of a management company and how it is different than a charter management organization.

Agency Response: The agency disagrees. This definition was not changed from the previous rule; it was only renumbered. There would be no change in the manner of doing business or providing services to the charter by contracting with vendors who are not considered to be management companies. There would be no requirement for an audit unless a management company serving under a management contract previously approved by the commissioner was involved.

Comment: Concerning §100.1001(18)(l), the Texas Classroom Teachers Association (TCTA) requested the definition of a central administration officer be amended to note the importance of providing the resources and support necessary for student performance.

Agency Response: The agency disagrees. The enumerated criteria focus on the leadership and management skills necessary to promote student performance and a culture of learning.

Comment: Concerning §100.1001(19), the TCTA requested that the definition of campus administration officer be amended to include language that addresses this position's role in providing instructional leadership and support for instructional personnel to attain campus goals.

Agency Response: The agency disagrees. The enumerated criteria focus on the leadership and management skills necessary to promote student performance and a culture of learning.

Comment: Concerning §100.1001(22), Andrews Kurth, LLP, suggested that the definition of a material charter violation be amended by replacing the word *An* with the word *Repeated* at the beginning of the definition.

Agency Response: The agency disagrees. Any adverse action taken against a charter must already constitute sufficient grounds for action under §§100.1021, 100.1023, 100.1025, or 100.1031.

Comment: Concerning §100.1001(25) and the definition of a high-performing charter, the TCSA suggested that the definition be revised to align with TEC, §12.1011, and, instead of using the term *charter holder*, use the term *eligible entity* in accordance with TEC, §12.101(a)(3), because the term *charter holder* is used in the context of charter applications in TEC, §12.1011.

Agency Response: The agency agrees and has modified §100.1001(25) at adoption to define high-performing entity.

Comment: Concerning §100.1001(25) and the definition of a high-performing charter, the Texas branch of the American Federation of Teachers (Texas AFT) stated that the definition of a high-performing charter should not be diluted. The Texas AFT stated that criterion should align with TEC, §12.1011, and exclude entities that have been exempted from full compliance.

Agency Response: The agency provides the following clarification. Section 100.1001(25) has been modified at adoption to define high-performing entity and align with TEC, §12.1011.

Comment: Concerning §100.1001(25) and the definition of a high-performing charter, Texans for Education Reform (TER) stated that a charter applicant should not have to demonstrate that it meets the performance standards as defined in TEC, §12.101, and that agency staff should conduct the analysis to make this determination.

Agency Response: The agency disagrees. While the commissioner may consider additional information when deciding to grant a charter under TEC, §12.1011, the applicant will have to meet the standards established by statute.

Comment: Concerning §100.1001(25) and the definition of a high-performing charter, the TCTA stated that only charters rated under the standard accountability system should be eligible for designation as a high-performing charter and that charters rated under the alternative education accountability system should not be considered for this designation.

Agency Response: The agency provides the following clarification. Section 100.1001(25) has been modified at adoption to define high-performing entity and align with TEC, §12.1011.

Comment: Concerning the definitions in §100.1001(3), Houston A+ Challenge stated that the commissioner and the State Board of Education (SBOE) should review innovations and that charter schools should be allowed to fully utilize innovative ideas and models that may not require traditional campuses or sites. Houston A+ Challenge added that the limitations set by campuses and sites hinder innovative models that seek to build suitable and appropriate learning experiences housed in a network storage cloud or models that wish to take full advantage of the rich and authentic offerings of an urban city.

Agency Response: The agency disagrees and has maintained that these definitions are necessary for accountability purposes and do not hinder charter schools from implementing innovative ideas and educational programs.

Comment: Concerning §100.1001(3)(A) and the definition of an employee of a charter school, the TCTA clarified that, despite the broad definition of *employee* in the charter school rules, eligibility for participation in the Teacher Retirement System (TRS) is determined by TRS rules. The TCTA added that it may be appropriate to delete the words *or any other person* from the definition, since they broaden the definition so much that an employee may or may not be included in current TRS rules. The TCTA explained that Texas Administrative Code, Title 34, Chapter 25, §25.1(l), states that a person employed by a Texas public school district and performing services on behalf of a campus or program charter school authorized under TEC, Chapter 12, Subchapter C, is eligible for membership in TRS if the employment otherwise meets the requirements of this section; an employee of an open enrollment charter holder that is contracted to provide services to a campus or program charter school is eligible for membership in TRS if the person is performing services on behalf of the campus or program charter school and the employment otherwise meets the requirements of this section; and an employee of a management company or other entity retained to provide management or other services on behalf of the campus or program charter school is not eligible for membership in TRS. The TCTA added that the enrolled version of Senate Bill 2, specifically TEC, §12.055(b) and §12.1012, includes language that negates the need for the vague *any other person* language.

Agency Response: The agency disagrees and maintains that the words *or any other person* allow the definition of an employee of a charter school to capture all individuals receiving remuneration to work at the charter school under the control and direction of an officer of the charter school.

Comment: Concerning §100.1001(3)(C) and the definition of a charter school campus, Jubilee Academic Center stated that the proposed language requiring a campus to serve 50% or more of its students in tested grades will have a negative impact on those charters that use smaller feeder sites to help grow their student enrollment over time.

Agency Response: The agency agrees that the definition of a charter should not include a limitation of 50% of students served in tested grades and has revised §100.1001(3)(C) at adoption accordingly. The agency continues to note that accountability ratings are necessary to implement multiple areas of statute, including expansion amendment requests in TEC, §12.114, and renewal decisions in TEC, §12.1141.

Comment: Concerning §100.1001(3)(C) and the definition of a charter school campus, the Rhodes School stated that the proposed language requiring a campus to serve 50% or more of its students in tested grades will have a negative impact on the charter school. The Rhodes School explained that in its program, the charter places teachers in community-based early learning programs, which impacts students in untested grades who attend the schools in the community. The Rhodes School stated that the proposed definition of a charter school campus would also jeopardize the renewal of the charter.

Agency Response: The agency agrees that the definition of a charter should not include a limitation of 50% of students served in tested grades and has revised §100.1001(3)(C) at adoption accordingly. The agency continues to note that accountability

ratings are necessary to implement multiple areas of statute, including expansion amendment requests in TEC, §12.114, and renewal decisions in TEC, §12.1141.

Comment: Concerning §100.1001(3)(C) and the definition of a charter school campus, Life School requested that the language requiring a campus to serve 50% or more of its students in tested grades be removed or amended to a lower percentage. Life School stated that this requirement will have an adverse effect on newly established charters, which usually operate smaller campuses because of the lack of facilities funding for charter schools.

Agency Response: The agency agrees that the definition of a charter should not include a limitation of 50% of students served in tested grades and has revised §100.1001(3)(C) at adoption accordingly. The agency continues to note that accountability ratings are necessary to implement multiple areas of statute, including expansion amendment requests in TEC, §12.114, and renewal decisions in TEC, §12.1141.

Comment: Concerning §100.1001(3)(C) and the definition of a charter school campus, the TCSA recommended removing the language requiring 50% of students to be in tested grades. The TCSA stated that it rejected the two presumptions that may have generated the proposed language in this definition: 1) that charter programs geared toward early childhood education (Pre-K3 to Grade 2) are undesirable; and 2) that the agency is not able to effectively measure the performance of a campus unless more than half of its students are in tested grades. The TCSA added that, as proposed, this rule may have the impact of stifling the long-term success of new charter campuses.

Agency Response: The agency agrees that the definition of a charter should not include a limitation of 50% of students served in tested grades and has revised §100.1001(3)(C) at adoption accordingly. The agency continues to note that accountability ratings are necessary to implement multiple areas of statute, including expansion amendment requests in TEC, §12.114, and renewal decisions in TEC, §12.1141.

Comment: Concerning §100.1001(3)(C) and the definition of a charter school campus, the TCSA stated that charter schools need to know which criteria the commissioner and the agency would use to waive the language requiring a campus to serve 50% or more of its students in tested grades.

Agency Response: The agency agrees and has modified §100.1001(3)(C) at adoption, removing the need for the waiver.

Comment: Concerning §100.1001(3)(C), an individual stated that the commissioner is granted the ability to waive this requirement in the issuance of the charter or in the renewal of the charter application, but noted that there is a lack of due process for decisions made by the commissioner. Additionally, the individual stated that students in residential treatment facilities should be automatically excluded from this rule because few of them perform at grade level.

Agency Response: The agency disagrees that there is a lack of due process. In response to other comments, the agency has modified §100.1001(3)(C) at adoption, removing the need for the waiver.

Comment: Concerning §100.1001(3)(C), the Texas State Teachers Association (TSTA) stated that it opposed the language allowing the commissioner to waive the requirement that a campus serve 50% or more of its students in tested grades. The TSTA added that public school campuses are paired with similar campuses to help determine accountability ratings and that a charter

school that does not serve students in tested grades minimizes the accountability process.

Agency Response: The agency disagrees with limiting the commissioner's waiver authority and notes the agency has modified §100.1001(3)(C) at adoption.

Comment: Concerning §100.1001(3)(D) and the definition of a charter school site, Azleway Charter School stated that the agency does not recognize the unique situations created when residential treatment facilities provide educational programs at multiple locations across the state. Azleway Charter School added that, while 25 miles may be an appropriate distance in urban areas, limiting the distance of a charter school site to 25 miles from the campus with which it is associated will increase the complexity of providing charter opportunities in suburban and rural communities.

Agency Response: The agency agrees and has modified §100.1001(3)(D) at adoption to change the 25-mile standard to 50 miles.

Comment: Concerning §100.1001(3)(D), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed recommended removing §100.1001(3)(D), stating that there is no directive in Senate Bill 2 for this rule and that the rule is arbitrary.

Agency Response: The agency disagrees, but has modified §100.1001(3)(D) at adoption to change the 25-mile standard to 50 miles.

Comment: Concerning §100.1001(3)(D), the TCSA recommended the removal of the arbitrary 25-mile limitation on what constitutes a charter site. Additionally, the TCSA recommended adding language that states that a charter site be located within the same metropolitan area as the charter campus with which it will be associated. The TCSA also recommended that an exception be made for charter schools operating within a residential treatment facility as these charter schools may operate within several residential treatment facilities across the state. The TCSA requested that, at a minimum, a grandfather provision be created for existing charter operators so that they do not experience any disruption or undue hardship in their charter operations.

Agency Response: The agency disagrees that the provision is arbitrary, but has modified §100.1001(3)(D) at adoption to change the 25-mile standard to 50 miles. A 50-mile standard ensures there is greater access and administrative oversight of the site. For a charter school operating a campus within a residential facility, it does not have to meet the 50-mile criteria. For existing sites exceeding the 50-mile standard, commissioner waiver is available if the situation warrants it.

Comment: Concerning §100.1001(3)(D), an individual stated that the definition of a site does not recognize unique situations created by residential treatment facilities in providing educational programs at multiple locations across the state. The individual added that, while 25 miles may be an appropriate distance in urban situations, limiting the distance of a charter school site to 25 miles from its associated campus will increase the complexity of providing charter opportunities in suburban and rural communities.

Agency Response: The agency agrees and has modified §100.1001(3)(D) at adoption to change the 25-mile standard

to 50 miles. For a charter school operating a campus within a residential facility, it does not have to meet the 50-mile criteria.

§100.1002, Application and Selection Procedures and Criteria.

Comment: Concerning §100.1002, the Texans for Education Reform (TER) commented that the application should contain a preface with a letter from the commissioner of education welcoming applicants and reviewing changes to the application process.

Agency Response: The agency agrees that the preface to the open-enrollment charter school request for application (RFA) is an appropriate place for a letter from the commissioner. This will provide direction to applicants as well as convey the commissioner's expectations for quality charter schools in the state of Texas. No change to the rule is necessary.

Comment: Concerning §100.1002, the TER articulated that a standard of review for each response area of an application should be part of the standard approval. The TER provided the DC Public Charter School Board application as a reference.

Agency Response: The agency agrees that a clearly articulated standard is part of a comprehensive application. The open-enrollment charter school RFA has contained the evaluation rubric used by the external review panel and has been updated to reflect the changes in the application. No change to the rule is necessary.

Comment: Concerning §100.1002, the TER requested that open-enrollment charter applicants proposing to serve secondary grades specify a method for tracking and continuously improving post-secondary outcomes of graduates (defining post-secondary to include credentials with value in the workforce as well as two-year and four-year degrees). The TER stated that the commissioner's opportunity to leverage charters as lighthouses in the state's efforts to increase post-secondary institutions is a critical strategy that charters should model in their role as catalysts for system improvement.

Agency Response: The comment is outside the scope of the current rule proposal. The agency agrees on the priority of preparing Texas students for college or career readiness and improving the post-secondary outcomes of graduates. This is reflective in the indexes on the state's academic accountability rating system.

Comment: Concerning §100.1002, the TER requested that the commissioner describe how the agency will determine if an applicant qualifies for consideration under TEC, §12.1011. The TER maintained that the burden should be shifted to the agency rather than an applicant.

Agency Response: The agency disagrees and has not indicated to applicants that they must conduct an analysis or crosswalk between existing out-of-state academic performance ratings and the Texas academic accountability rating system. The data requested in the application allows for the high-performing entity to submit the rating earned in the out-of-state system. Additional data may be requested by the agency to allow staff to review other aspects of the applicant's out-of-state performance system.

Comment: Concerning §100.1002, the TER stated that the commissioner should make meaningful distinctions between requirements imposed on applicants with demonstrated histories of success and those imposed on applicants without a history of success. TEC, §12.1011, exempts high-performing entities from the restriction limiting the commissioner's authority to grant a charter only to an applicant that meets any "financial, governing, educa-

tional, and operational standards" adopted by the commissioner. The TER believes that performance history of the eligible entity should be the primary determinant in authorizing an out-of-state charter.

Agency Response: The agency agrees. The open-enrollment charter school RFA will include an opportunity for an applicant to share data and demonstrate histories of success in order to be considered an eligible entity under TEC, §12.101(a)(3). Out-of-state applicants have the opportunity to communicate their successes and strengths as evident in their current operations. The financial, governing, educational, and operational standards remain baseline considerations for the commissioner when assessing and evaluating charter applicants. No change to the rule is necessary.

Comment: Concerning §100.1002, the TER stated that the requirement for a local public hearing has a chilling effect in that they are expensive, not well attended, and do not engender a deep dialogue. The TER suggested replacing the requirement for a local public hearing with a requirement that makes applicants provide evidence of community outreach and efforts to incorporate community feedback into the proposal.

Agency Response: The agency disagrees. The public hearing provides the opportunity for charter applicants to demonstrate community outreach and solicit feedback from the community in which the charter applicant proposes to operate a school. The public meeting requirement and subsequent documentation does not preclude the charter applicant from conducting surveys and other avenues of outreach.

Comment: Concerning §100.1002, the TER suggested that the commissioner notify applicants clearly that dropout recovery charters are exempt from the statutory cap.

Agency Response: The agency partially agrees. The comment is outside the scope of the proposal for §100.1002; however, §100.1003 clearly articulates that dropout recovery charters are exempt from the statutory cap. Future applications will reflect the opportunity to serve as a dropout recovery charter, which does not impact the statutory cap on charters.

Comment: Concerning §100.1002, the TER stated that the commissioner should continue moving forward with agency plans to issue and manage TEC, §12.101 and §12.1011, application processes separately.

Agency Response: The agency provides the following clarification. The two distinct processes do not occur devoid of one another. Rather, they occur in coordination with one another and follow TEC, §12.111. The open-enrollment charter school RFA will have sections for entities not currently operating a charter and will have sections for entities currently operating out-of-state charters. No change to the rule is necessary.

Comment: Concerning §100.1002, the TER stated that the commissioner should improve the depth and consistency of application reviews by revising the process to include a three-step process: Step 1 would permit applicants to submit an application for early review for completeness; provide the applicant with a list of missing items, if any exist; require that the applicant submit a complete application by the final deadline; Step 2 would engage a smaller group of reviewers with subject-area expertise and experience to review and score applications; convene reviewers for discussion of applications and permit agency staff to participate for the purpose of answering questions; and Step 3 would require the commissioner designees and SBOE members to visit

at least one site of an experienced operator recommended by the review panel.

Agency Response: The agency partially agrees. Section 100.1002(b) has been modified accordingly to allow applicants to submit missing information during the completion check. External reviewers are solicited through a request for qualifications (RFQ). The RFQ allows the agency to vet external reviewers by choosing experts in the field as external reviewers. Evaluators are provided training prior to reading applications and also have the ability to contact agency staff with questions if necessary. Requiring the SBOE to visit charters is outside the commissioner's scope of authority. Capitalizing both on the expertise of agency staff during the internal review process as well as the external reviewers' comments should be sufficient to determine which charters the commissioner may choose to visit.

Comment: Concerning §100.1002, the TSTA stated that this provision allows the commissioner to grant a charter for an open-enrollment charter school to an applicant that has performed at a level of performance comparable to the highest or second highest performance rating category as established by law in another state. The TSTA noted that at the hearing on the proposed revisions, a suggestion was made that the commissioner should relax the rule requiring charter applicants from other states to demonstrate a history of operating high performing charters in those other states before receiving a charter in Texas. The TSTA stated that relaxing this requirement would increase the risk that poor performing charters would be given access to scarce state resources and would run afoul of the very specific language in the statute. The TSTA also stated that if this requirement is relaxed, the risk is great and the reward is nonexistent. The TSTA strongly encouraged the commissioner to maintain this meaningful statutory requirement.

Agency Response: The agency agrees that the statute is clear. The application process will require out-of-state applicants to provide evidence that they meet the highest or second highest rating in the state(s) in which they operate.

Comment: Concerning §100.1002(a)(3) and (4), Houston A+ Challenge commented that it is unclear if information regarding the scoring criteria and minimum scores is available to applicants seeking approval as well as the review panel.

Agency Response: The agency provides the following clarification. The evaluation criteria and cut scores are available in the open-enrollment charter school RFA prior to an applicant submitting its application for charter. Information specific to an application and the scores it received in the external review process are public information and are available upon request.

Comment: Concerning §100.1002(b), the TER commented that the TEA should provide applicants with a very short period to fix an error during the initial review stage. The TER stated that this approach has the same benefit of weeding out unqualified applicants early, while eliminating the high-risk nature of the current process for applicants.

Agency Response: The agency agrees. Section 100.1002(b) has been modified at adoption to allow time for applicants applying for open-enrollment charters to submit the necessary information.

Comment: Concerning §100.1002(d), the Texas AFT and several individuals commented that the ethics requirements articulated for persons serving as external application review panel members are commendable and should be maintained.

Agency Response: The agency appreciates the support of its efforts to strengthen the transparency and impartiality of the selection process.

Comment: Concerning §100.1002(e), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that the application process should allow for a reasonable appeal of an application that is "administratively incomplete." The commenters stated that if an applicant's scores from different reviewers show significant disparity, the application should be submitted to a different panel of scorers or subject to a commissioner review. In addition, the commenters stated that scores should be normed to correct for the fact that different applications are scored by different people. The commenters noted that one reviewer may score harder across the board than another reviewer. Finally, the commenters stated that the commissioner should retain the right to review all scoring.

Agency Response: The agency partially agrees. Section 100.1002(b) has been modified at adoption to allow for a sponsoring entity to submit information that is missing from the open-enrollment charter school RFA. Relating to the comments about reviewers and scoring, the agency provides the following clarification. The agency employs the standard grant review process allowing for two methodologies to be used when external reviewers are scoring RFAs. Employment of the two methodologies allows for potential disparities in scoring to be addressed. The commissioner does retain the right to review all scoring.

Comment: Concerning §100.1002(f), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented on the proprietary language provision in the RFA, noting that it should be clarified to allow an applicant to redact proprietary material and clearly indicate which information is public and which information is for internal review.

Agency Response: The agency provides the following clarification. The inclusion of Family Educational Rights and Privacy Act (FERPA) and proprietary information posted on the public website of the TEA would cause the agency to be in violation of laws pertaining to such provisions. Section 100.1002(f) and the instructions and guidelines of the open-enrollment charter school RFA attempt to clearly define requirements of the applicant to redact FERPA information as well as proprietary information to protect personal information and intellectual copyright material.

Comment: Concerning §100.1002(f), the Texas AFT commented on the proprietary language provision in the RFA, noting it should be defined as narrowly as possible to prevent indiscriminate withholding of information essential for the evaluation of a charter applicant.

Agency Response: The agency provides the following clarification. The inclusion of FERPA and proprietary information posted on the public website of the TEA would cause the agency to be in violation of laws pertaining to such provisions. Section 100.1002(f) and the instructions and guidelines of the open-enrollment charter school RFA attempt to clearly define requirements of the applicant to redact FERPA information as well as proprietary information to protect personal information and intellectual copyright material.

Comment: Concerning §100.1002(g), the Texas AFT commented that the commissioner should be in attendance at the

interview of charter applicants meeting the minimum cut-score for an interview.

Agency Response: The agency agrees that decisions on charters are very important, but it disagrees that the commissioner's absence is a detriment to the process. The interviews are recorded, which allows for the commissioner to review the interviews electronically. The commissioner's designee is present at all interviews.

Comment: Concerning §100.1002(h), the Texas AFT requested a change of language to reflect a mandatory stance, "the commissioner shall" rather than the commissioner may use criteria.

Agency Response: The agency disagrees. The permissive language in this subsection allows the commissioner to award a charter based on discretionary consideration of the items listed. Statutorily, the commissioner only has to award a charter based on mandatory language found in §100.1002(i).

Comment: Concerning §100.1002(h), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that the actual charter document approved by the commissioner should be the true guiding charter of a school; however, the proposed rules imply that every communication during the application process, including verbal comments in interviews, will be considered part of the school's charter.

Agency Response: The agency provides the following clarification. The award of charter is based both on the information related in the open-enrollment charter school RFA as well as responses to questions asked during the interview process. Any assertions made during the interview process that are not part of the charter will be clarified in the contingency process. The permissive language in this subsection allows the commissioner to award a charter based on discretionary consideration of the items listed. Statutorily, the commissioner only has to award a charter based on mandatory language found in §100.1002(i). Additionally, the comments on the impact statements, which are a requirement in the open-enrollment charter school RFA, are taken into consideration.

Comment: Concerning §100.1002(h), Houston A+ Challenge requested that wording be changed to clarify the meaning of this subsection.

Agency Response: The agency provides the following clarification. The award of charter is based both on the information related in the open-enrollment charter school RFA as well as responses to questions asked during the interview process. Any assertions made during the interview process that are not part of the charter will be clarified in the contingency process. The permissive language in this subsection allows the commissioner to award a charter based on discretionary consideration of the items listed. Statutorily, the commissioner only has to award a charter based on mandatory language found in §100.1002(i). Additionally, the comments on the impact statements, which are a requirement in the open-enrollment charter school RFA, are taken into consideration.

Comment: Concerning §100.1002(h), the Texas AFT and TSTA commented on the impact statements. The Texas AFT requested "evidence of parental and community support for or opposition to the proposed charter school" rather than the requirement of sending impact statements to affected districts. The TSTA commented that charter applications include a list of many school districts that may be impacted by the opening

of a charter campus. The TSTA stated that the TEA should ensure that, at the very minimum, a majority of school districts identified by the charter applicant as being potentially impacted by the opening of a charter campus submit impact statements. The TSTA further stated that the TEA should guarantee that if a majority of school districts submitting statements identify a negative impact, the charter will not be approved.

Agency Response: The agency disagrees. Parental and community support is gauged through the requirement to hold a public meeting. For clarification, however, §100.1002(h) has been modified to include evidence of parental and community opposition to the list of criteria that may be considered. School districts have the opportunity to provide impact statements to the agency, and to the extent they do submit, the commissioner takes those comments into consideration. The agency disagrees that a majority of negative impact statements should warrant or guarantee the charter application will not be approved. A reduction in revenue by a traditional district based on the loss of ADA Foundation School Program funding associated with students is a given and cannot be the sole basis for denying an application.

Comment: Concerning §100.1002(h)(8), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed suggested the removal of the reference to the variety of charter operators. The commenters stated that there is no statutory authority to require that any one cycle of applicants represents a certain variety of operators. The commenters also stated that while it is certainly the hope that public charter schools continue to pursue a diverse set of missions, a requirement that they do so goes beyond what is in the statute.

Agency Response: The agency disagrees. This is a conforming rule. The wording remains unchanged from when it was part of the SBOE rule relating to the application and only reflects information that the commissioner may consider.

Comment: Concerning §100.1002(i)(3)(B), Houston A+ Challenge commented that it strongly supports the inclusion of "previous experience operating a public school" as a consideration for award.

Agency Response: The agency appreciates the support of its proposed language.

Comment: Concerning §100.1002(j), the Texas AFT and TCSA commented that elaboration and clarity is needed on the meaning and mechanics of giving priority to a charter applicant proposing to operate in an attendance zone of a school district campus assigned an "academically unacceptable" performance rating under TEC, §39.054, for two preceding years.

Agency Response: The agency agrees clarity is needed around the issuance of priority points for a charter applicant proposing to operate in an attendance zone of a school district campus assigned an "academically unacceptable" performance rating under TEC, §39.054, for two preceding years. The agency will address this in the open-enrollment charter school RFA instructions and guidelines as well as the RFA evaluation criteria. No modification to the rule is necessary.

Comment: Concerning §100.1002(l), the Coalition SAUS commented that the intent of Senate Bill (SB) 2 was not to relegate the SBOE to only having veto power of charter applicants that the commissioner has approved.

Agency Response: The agency disagrees. The language tracks the statutory language of SB 2 as found in TEC, §12.101(b-0),

conferring upon the commissioner the authority to investigate, evaluate, and grant a charter for an open-enrollment charter school.

Comment: Concerning §100.1002(l) and (m), an individual commented that, under SB 2, the SBOE is given veto authority over a proposed application once it has been approved by the commissioner and presented for SBOE review. The individual stated that the SBOE has the authority to amend its own rules and operating procedures; however, this does not extend to regulating a sister state agency.

Agency Response: The agency provides the following clarification. The agency is not attempting to regulate a sister state agency. Rather, the rule is attempting to fully outline the approval process by citing language directly from the statute as well as the proposed SBOE rules. The language has been modified to reference other actions, but not be worded as dictating.

Comment: Concerning proposed §100.1002(n), the Texas League of Community Charter Schools (TLCCS) commented that revising this rule would afford the agency greater flexibility in working with awardees to resolve contingencies according to a deadline that is appropriate to the circumstances at hand and even perhaps agreed to by an awardee.

Agency Response: The agency disagrees. The open-enrollment charter school RFA is a competitive process. The contingency timeline is uniform for all applicants.

Comment: Concerning proposed §100.1002(n), the TCSA commented that the commissioner should remove the arbitrary two-month deadline in the rule to permit flexibility in fulfilling contingencies to the charter school contract. The TCSA stated that an awardee should not be penalized for failure to fulfill a contingency if the deadline prescribed by the TEA is beyond the control of the awardee, and the TEA should provide flexibility in the amount of time the awardee needs to fulfill the contingency.

Agency Response: The agency disagrees. The open-enrollment charter school RFA is a competitive process. The contingency timeline is uniform for all applicants.

§100.1003, Application to Dropout Recovery Charters.

Comment: Concerning §100.1003, the TCSA commented that the rule does not align with the intent of the statute, which is to exclude dropout recovery schools from the charter cap. The TCSA stated that the TEA lacks the statutory authority to impose by rule the mandatory expiration of a charter term upon failure to meet the definition of a dropout recovery charter. The TCSA noted that the term of a charter is set by the state, and there is no authority in statute that gives the commissioner the power to dictate the expiration of a charter term. The TCSA also noted that an open-enrollment charter school is open enrollment and thus does not have the ability to determine the type of student it serves. The TCSA commented that the charter should not be subject to penalty or expiration because the students who actually enroll in the school are not those the charter hoped to serve as desired in the charter's original charter application.

Agency Response: The agency agrees, but a language change is not needed. The commissioner may grant a waiver should specific circumstances justify a temporary lapse of meeting the qualifying definition. Language in TEC, §12.101(b-7), only applies to applicants who seek a charter grant outside the open-enrollment cap.

Comment: Concerning §100.1003, the TCSA commented that having a dropout recovery charter's contract expire if it has student population fluctuations that take it out of the definition of a dropout recovery charter is not the intention of the statute. The TCSA recommended adding language for minimum fluctuations in student/attendance enrollment and more due process and adding specific language that does not apply to existing charters under the cap. The TCSA noted that there will be fluctuations in numbers from year to year.

Agency Response: The agency agrees, but a language change is not needed. The commissioner may grant a waiver should specific circumstances justify a temporary lapse of meeting the qualifying definition. Language in TEC, §12.101(b-7), only applies to applicants who seek a charter grant outside the open-enrollment cap.

Comment: Concerning §100.1003, the TER commented that the legislature sought to accelerate the creation of charter schools serving high at-risk populations by excluding dropout recovery schools from the charter cap. The TER commented that proposed rules, however, undermine this intent by requiring automatic termination of a charter whose at-risk student population momentarily falls below the required threshold. The TER stated that the prospect of immediate forfeiture makes these charters too risky to attract high-quality organizations. The TER recommended that the rules either use a rolling average across multiple years or give the school a defined period of time to achieve the right population mix provided that the percentage has not deviated from the requirement by more than 15%.

Agency Response: The agency agrees, but a language change is not needed. The commissioner may grant a waiver should specific circumstances justify a temporary lapse of meeting the qualifying definition. Language in TEC, §12.101(b-7), only applies to applicants who seek a charter grant outside the open-enrollment cap.

Comment: Concerning §100.1003, Responsive Education Solutions commented that the rule lays out a new structure for application as a dropout recovery charter as required by TEC, §12.101(b-7). Responsive Education Solutions noted that understandably, there are specifications and requirements in this new rule for a charter holder to remain eligible for such a charter; however, the timeline listed does not take into account the mobility of an open-enrollment charter school's student population. Responsive Education Solutions requested that the agency modify the rule text to read, "shall expire at the end of the second consecutive school year in which the school does not meet the statutory definition of dropout recovery." Responsive Education Solutions stated that this will allow for changes in student population but will require the dropout recovery charter school to stay true to its original mission of serving students at risk of dropping out while serving each student that seeks enrollment.

Agency Response: The agency agrees, but a language change is not needed. The commissioner may grant a waiver should specific circumstances justify a temporary lapse of meeting the qualifying definition. Language in TEC, §12.101(b-7), only applies to applicants who seek a charter grant outside the open-enrollment cap.

§100.1007, Annual Report on Open-Enrollment Charter Governance.

Comment: Concerning §100.1007, Responsive Education Solutions commented that its board has adopted detailed policies and procedures to permit the public to access the

board in a venue that allows the board to properly address public comments, questions, and concerns as a corporate body (e.g., grievance policies, public comments at board meetings, etc.). Responsive Education Solutions stated that removing the requirement for the street address for each board member will ensure the board's ability for prompt resolution of grievances at the lowest administrative level possible while permitting public access to the governing body at regular board meetings and through the formal grievance process. Responsive Education Solutions noted that this will also address the safety concerns related to providing the home address of a governing board member, who is not an elected official, to the general public.

Agency Response: The agency agrees. Section 100.1007(b)(5) has been modified at adoption to remove the street address of the individual's primary residence.

Comment: Concerning §100.1007(a)(3), Houston A+ Challenge commented on the inclusion of the compensation of board members on the reporting form. Houston A+ Challenge stated that board members who are giving freely of their time should be reimbursed for any expenses incurred as a result of their charter work; however, there is concern about compensation for board members and the "for profit" dynamic it introduces. Houston A+ Challenge noted that there are states that compensate board members in traditional delivery school districts; however, Texas is not one of those states. Houston A+ Challenge urged careful consideration of this and, if the possibility remains, that it be carefully monitored.

Agency Response: The agency provides the following clarification. The requirement that board member compensation be reported has not changed at all. The provision was just renumbered and moved from SBOE rule to commissioner rule.

Comment: Concerning §100.1007(c)(1), the TCTA recommended the addition of the phrase, "including the value of vacation or other compensated time that is not worked."

Agency Response: The agency disagrees and has determined that vacation time is covered by the term *benefits* and should be disclosed on this form.

Comment: Concerning §100.1007(c)(3), the TCTA recommended the addition of the phrase, "as well as travel expenses paid by the charter or vendors of the charter."

Agency Response: The agency disagrees and has determined that the term *reimbursement for personal expenses* includes the reimbursement of travel expenses.

§100.1010, Performance Frameworks.

Comment: Concerning §100.1010, Texas AFT commented that the Charter School Performance Framework rules are incomplete and their rigor cannot be evaluated.

Agency Response: The agency provides the following clarification. Section 100.1010 provides for an annual adoption of the Charter School Performance Framework manual, which will outline the criteria used. Each annual manual will be made available for public comment as part of the rulemaking process.

§100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.

Comment: Concerning §100.1015, the TCSA commented that the amendments to the Chapter 100 rules do not contain a separate and distinct charter application process for high-perform-

ing charter applicants. The TCSA suggested including a separate and distinct application process for high-performing charter applicants, which aligns with the intent of TEC, §12.1011. The TCSA stated that the commissioner should not put the burden on the applicant to translate high performance to Texas standards.

Agency Response: The agency disagrees. High-performing, out-of-state charters have a distinct application. The applicant does not have the burden to translate its current state's performance ratings to Texas standards. The application requires the applicant to submit a copy of its performance rating from another state.

Comment: Concerning §100.1015(a), Responsive Education Solutions commented that this is a new section of the rule that seems to have unintentional consequences. Responsive Education Solutions further commented that understanding that this language is taken from TEC, §12.101(b), TEC, §12.101(b-3), states that the commissioner may consolidate multiple charters into a single charter holder with written consent from the charter holders. Responsive Education Solutions stated that consolidating multiple charters into one charter would necessitate the return of at least one charter back to the state or the state authorizer. Responsive Education Solutions noted that an applicant that previously returned a charter as part of a voluntary consolidation would not be eligible to receive a new charter under these rules and recommended that an exception be created for an applicant that previously returned a charter as part of a voluntary consolidation.

Agency Response: The agency disagrees. The rule precisely follows TEC, §12.101(b)(1). A charter holder currently holding a charter for an open-enrollment charter school would not be an eligible applicant regardless of whether it had returned one or more of its charters. This statute does not contain an exception for an applicant that has returned a charter pursuant to a voluntary consolidation. Accordingly, the rule should not contain such an exception.

Comment: Concerning minimum financial standards for applicants in §100.1015, two individuals commented that the removal of specific levels and formulas for minimum capital and cash handicaps the applicant from understanding the expectations on which its application and operation will be assessed. The individuals recommended that a range of current assets sufficient to establish available funding for start-up costs with some amount per number of students proposed to be served be included in the rule.

Agency Response: The agency disagrees and determined that this change is mandated by a new provision in TEC, §12.101(b-8), which prohibits the commissioner from excluding an applicant from the grant of a charter award solely because the applicant fails to demonstrate having a certain amount of current assets in cash. The RFA does contain a start-up budget worksheet established to assist applicants in determining sufficient funding for first-year operations.

Comment: Concerning §100.1015(b)(1)(C), the TCSA stated that the rule does not provide a charter applicant with an indication of the minimum amount of current assets that are necessary to establish financial viability in the charter application. The TCSA recommended that this section be revised to provide a charter applicant with an indication of the amount, or at least a range in the amount, of current assets that are sufficient to establish available funding for start-up costs. The TCSA stated that the previous rule set forth a specific dollar amount

of available funding for start-up costs, equal to the greater of \$50,000 per charter or \$500 times the number of students that the charter proposed to serve in its first year of operation, and at least 30 day's cash on hand equal to that same amount.

Agency Response: The agency disagrees and determined that this change is mandated by a new provision in TEC, §12.101(b-8), which prohibits the commissioner from excluding an applicant from the grant of a charter award solely because the applicant fails to demonstrate having a certain amount of current assets in cash. The RFA does contain a start-up budget worksheet established to assist applicants in determining sufficient funding for first-year operations.

Comment: Concerning §100.1015(b)(1)(C), the Texas AFT stated that the lack of minimum financial standards for charter applicants appears to loosen financial viability standards. The Texas AFT recommended strengthening the financial standards for charter applicants.

Agency Response: The agency disagrees and determined that this change is mandated by a new provision in TEC, §12.101(b-8), which prohibits the commissioner from excluding an applicant from the grant of a charter award solely because the applicant fails to demonstrate having a certain amount of current assets in cash. The RFA does contain a start-up budget worksheet established to assist applicants in determining sufficient funding for first-year operations.

Comment: Concerning §100.1015(b)(1)(C) and the minimum financial standards for charter applicants, the TLCCS stated that the commissioner proposes to revise existing rule to include loans and lines of credit as assets and as cash on hand in a charter application, provided that the loans and lines of credit are "irrevocable for a period of at least one year," and "unless the funds have been drawn down," but added that TEC, §12.101(b-8), stipulates: "In adopting any financial standards under this subchapter that an applicant for a charter for an open-enrollment charter school must meet, the commissioner shall not: (1) exclude any loan or line of credit in determining an applicant's available funding; or (2) exclude an applicant from the grant of a charter solely because the applicant fails to demonstrate having a certain amount of current assets in cash." The TLCCS acknowledged that the commissioner was granted rulemaking authority for the establishment of financial standards applicable to a charter applicant, but noted that TEC, §12.101(b-8), prohibits the commissioner from adopting any financial standard that excludes any loan or line of credit for the purpose of determining the charter applicant's available funding. The TLCCS added that, despite this prohibition, the commissioner proposed such a standard by limiting loans and lines of credit that are irrevocable for at least one year and that have not been drawn down. The TLCCS expressed concern that this requirement may discourage applicants lacking the financial wherewithal from meeting the financial standards, which may result in the denial of an otherwise meritorious charter application. Furthermore, the TLCCS stated that the timing of the charter application process does not align with the timing or reality of how most loans and lines of credit are established, noting that they are generally renewed on a year-to-year basis due to banking regulations and that the bank's year begins on the date the loan was initiated and likely does not meet the requirement of "at least one year" of the proposed rule. The TLCCS suggested that this language be removed so that the resulting rule conforms to the language in TEC, §12.101(b-8).

Agency Response: The agency agrees and has modified §100.1015(b)(1)(C) to remove these provisions.

Comment: Concerning §100.1015(b)(2)(C), Houston A+ Challenge stated that the agency should consider adding language that substitutes and specifies that a nonprofit corporation should include in its bylaws language that says it will comply with the Texas Open Meetings Act when matters concerning the charter school are discussed and that it will comply with the Texas Public Information Act on all information related to the charter school. Houston A+ Challenge stated that such language and parameters will meet the intent of the law, but will also not be so overreaching as to discourage strong nonprofit organizations from applying for an open-enrollment charter.

Agency Response: The agency disagrees. Pursuant to TEC, §12.1051, a charter is considered a governmental entity and must include in its bylaws assurances that it will meet any requirement in the Texas Government Code, Chapters 551 or 552, otherwise the charter contract is not approved. Section 100.1015(b)(2)(C) was not proposed for any substantive change.

Comment: Concerning §100.1015(b)(1)(D), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that throughout the draft rules, a charter campus is now required to have at least 50% of its students in tested grades. The commenters expressed opposition to this requirement, for which there is no statutory authority in SB 2. The commenters stated that there are excellent charter operators, including Uplift Education, which by design open new campuses in lower grades before growing to eventually meet this 50% threshold. The commenters also stated that this model, which has time and again proven its success, is designed to help students who are often several grade levels behind to catch up by the time they reach fifth grade. The commenters acknowledged that the agency is attempting to strengthen accountability, but contended that this effort not only overreaches statute but also stifles growth models that have led to sustained academic gains. The commenters stated that §100.1015(1)(D) again requires a charter holder to enroll 500 students by the end of its fifth year "to ensure financial viability" and urged the agency to remember that charter operators have to also consider academic viability. The commenters stated that this enrollment requirement would force a school to grow to 500 even if it was not in the best interest of students.

Agency Response: The agency agrees and has removed the 500-student minimum requirement from §100.1015(b)(1)(D) at adoption. Language reflects the rule as currently in effect. The agency notes that a charter school must be held accountable for the academic performance of its students. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter.

Comment: Concerning §100.1015(b)(1)(D), Houston A+ Challenge commented that the agency should consider including further explanation for how exceptions might be granted for smaller minimums. Houston A+ Challenge noted that provisions that address minimum entry enrollment, as well as minimum growth acceptable after a few years, help ensure that a charter is financially viable. Houston A+ Challenge described other arrangements that might be equally, if not more, viable and valuable to young Texans and encouraged the agency to adjust these requirements.

Agency Response: The agency agrees and has removed the 500-student minimum requirement from §100.1015(b)(1)(D) at adoption. Language reflects the rule as currently in effect.

Comment: Concerning §100.1015(b)(1)(D), the TLCCS and two individuals commented that the 500-student minimum could impair creativity in the structure and administration of charter schools, and that many charters and school districts currently serve less than 500 students.

Agency Response: The agency agrees and has removed the 500-student minimum requirement from §100.1015(b)(1)(D) at adoption. Language reflects the rule as currently in effect. The agency notes that a charter school must be held accountable for the academic performance of its students. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter.

Comment: Concerning §100.1015(b)(3)(F), the Texas AFT commented on teacher qualifications and recommended that the rule remain as proposed.

Agency Response: The agency agrees. TEC, §12.129, requires all teachers and principals to have, at a minimum, a baccalaureate degree. The language conforms with statute.

Comment: Concerning §100.1015(b)(1)(G), the TLCCS commented that this rule would require new charter schools with projected enrollments of less than 500 students to allocate no more than 27% of their budgets to administrative costs, and it would require new schools with projected enrollments of more than 500 students to allocate no more than 16% of their budgets to administrative costs. The TLCCS recommended that the commissioner consider a more discretionary approach to overseeing administrative budgets of charter schools. The TLCCS also observed that the administrative costs ratios the TEA generally employs as part of its FIRST rating system are based on school district administrative costs, which cannot be applied to charter schools on an apples-to-apples basis, and discouraged the agency from forcing charters to conform to school district administrative requirements.

Agency Response: The comment is outside the scope of the current rule proposal. Language reflects the rule as currently in effect.

Comment: Concerning §100.1015(b)(3)(H), the TLCCS commented that this rule lacks statutory authority. The TLCCS also commented that many charter applicants may not be able to provide a final copy of the management contract because it has not been negotiated, and should not be negotiated, finalized, or formally executed until after the charter application has been approved. The TLCCS suggested that the rule be amended to allow an applicant to submit a tentatively negotiated management contract, or to disclose the tentatively discussed terms of a yet-to-be-negotiated management contract.

Agency Response: The agency disagrees and determined that TEC, §§12.1012, 12.111, 12.1163, 12.120, 12.121, 12.124, 12.125, 12.126, and 12.127, provide the agency with ample authority to obtain and review management contracts, contracts for management services, and contracts with management companies. A copy of the final contract is necessary in order for the agency to conduct a review of the contract's actual terms, rather than tentative terms or descriptions of tentatively discussed terms. There is no practical reason that a contract cannot be executed before the application is submitted because

performance under a contract may be conditioned upon the approval of the charter application.

Comment: Concerning §100.1015(b)(3)(H), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that this section requires a charter applicant to provide a final copy of any management contracts, including the exact monetary amount for them. The commenters acknowledged that the agency is attempting to protect against questionable management contracts; however, expressed the concern that this requirement poses a major barrier to a new applicant because it may be unlikely that an applicant would have these final contracts and amounts available at the application stage. The commenters noted that this requirement would be more reasonable if applicants had to provide and adhere to a proposed range of sums, or a limit on sums, to be paid for management contracts and suggested that the range could be based on best practices determined by financial market experts and the state's past experiences with new operators.

Agency Response: The agency disagrees and determined that TEC, §§12.1012, 12.111, 12.1163, 12.120, 12.121, 12.124, 12.125, 12.126, and 12.127, provide the agency with ample authority to obtain and review management contracts, contracts for management services, and contracts with management companies. A copy of the final contract is necessary in order for the agency to conduct a review of the contract's actual terms, rather than tentative terms or descriptions of tentatively discussed terms. There is no practical reason that a contract cannot be executed before the application is submitted because performance under a contract may be conditioned upon the approval of the charter application.

Comment: Concerning §100.1015(b)(4)(A)(ii)(I), Responsive Education Solutions commented that the addition of submission of missing attachments is a good and appropriate change to ensure that potential high-quality charter holders are not held back from serving students.

Agency Response: The agency appreciates the support of its proposed language.

§100.1021, Revocation and Modification of Governance of an Open-Enrollment Charter; §100.1022, Standards to Revoke and Modify the Governance of an Open-Enrollment Charter; and §100.1023, Intervention Based on Charter Violations

Comment: Concerning §100.1021, American YouthWorks stated that the proposed rule fails to give charter holders due process and constitute a retroactive application of law.

Agency Response: The agency disagrees and determined that the rule provides charter holders with the statutory due process required by TEC, Chapters 12 and 39. The agency further determined that the rule does not constitute a retroactive application of law.

Comment: Concerning §100.1021 and §100.1023, the Andrews Kurth, LLP, stated that the proposed rules give no allowance for administrative errors by the charter, no avenue to correct its path, and no opportunity to learn from challenges.

Agency Response: The agency disagrees and determined that the rules properly implement and clarify the basis for a charter revocation or modification of governance described under TEC, §12.115. The statute does not provide for the allowances, avenues, and opportunities that the commenter observes. The

rules do provide an opportunity for the agency to correct an administrative error by the charter.

Comment: Concerning §100.1021, Uplift Education stated that the proposed rule is overly broad and does not allow consideration of facts and circumstances.

Agency Response: The agency disagrees and determined that the rule properly implements and clarifies the basis for a charter revocation or modification of governance described under TEC, §12.115. The statute does not provide for the consideration of facts and circumstances that the commenter observes.

Comment: Concerning §100.1021(a), Responsive Education Solutions stated that it does not believe the proposed rule allows the commissioner to revoke or reconstitute the board of a charter based on a violation of any one of the six categories during a single year.

Agency Response: The agency disagrees and determined that the rule properly implements and clarifies the basis for a charter revocation or modification of governance described under TEC, §12.115. The statute does not limit the commissioner's authority as described in the comment.

Comment: Concerning §100.1021(a)(2), Uplift Education stated that the proposed rule is unclear as to which charter may be revoked if a charter holder has multiple charters.

Agency Response: The agency disagrees and determined that the rule follows the language used in TEC, §12.115(c), and that the academic and financial accountability performance ratings used are assigned to each open-enrollment charter school operated by a charter holder. Accordingly, there is no risk that ratings assigned to one charter school will be used to sanction a different charter school, even where both charters are held by the same charter holder.

Comment: Concerning §100.1021(b), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed stated that the proposed rule incorporates a variety of accountability performance rating labels from several periods as "academically unacceptable" and "lower than satisfactory."

Agency Response: The agency disagrees and determined that the rule follows the language used in TEC, §12.115(c), and that the academic and financial accountability performance ratings are clearly defined and categorized in the ratings rules and associated manuals under 19 TAC §97.1001 and §109.1002.

Comment: Concerning §100.1021(b)(2)(D) and (E), the Andrews Kurth, LLP, stated that the proposed rule is retroactive and that the specified years should be replaced with future years.

Agency Response: The agency disagrees and determined that the rules properly reflect the ratings and years to be used as the basis for a charter revocation or modification of governance described under TEC, §12.115(c).

Comment: Concerning §100.1021(c), the Texas AFT and Responsive Education Solutions stated that the proposed rule should restore the requirement to notify parents of actions against the charter school.

Agency Response: The agency disagrees and determined that the rule accurately reflects the elimination of this requirement under Senate Bill 2, which was previously found under TEC, §12.116(b).

Comment: Concerning §100.1022, the TCSA and Austin Achieve stated that the proposed rule lacks clear standards and does not set forth separate criteria for revocation and modification of governance.

Agency Response: The agency disagrees and determined that the rule sufficiently describes the criteria for taking action, while preserving the flexibility found in TEC, §12.115(a).

Comment: Concerning §100.1022, an individual stated that the proposed rule vests authority to evaluate the charter school with the TEA staff and the commissioner, who lack the ability to evaluate appropriate sanctions and fail to use best practices or distinguish between minor and significant violations.

Agency Response: The agency disagrees and determined that TEA staff has the ability to evaluate charter schools and determine the appropriate sanction. The rule sufficiently describes the criteria for taking action, while preserving the flexibility found in TEC, §12.115(a).

Comment: Concerning §100.1022, Azleway Charter School stated that the proposed rule vests authority to evaluate the charter school with the commissioner, who is unable to consistently apply rules and distinguish between minor and significant violations.

Agency Response: The agency disagrees and determined that the commissioner has the ability to evaluate charter schools and can consistently apply rule and distinguish between minor and significant violations. The rule sufficiently describes the criteria for taking action, while preserving the flexibility found in TEC, §12.115(a).

Comment: Concerning §100.1022 and §100.1031, the TCSA stated that the proposed rules make the criteria for sanctions and renewal too complicated.

Agency Response: The agency disagrees and determined that the rules sufficiently describe the criteria for taking action, while preserving the flexibility found in TEC, §12.115(a) and §12.1141.

Comment: Concerning §100.1022, the TCSA stated that the proposed rule does not include a mechanism for the charter holder to demonstrate that severe sanctions should not be imposed.

Agency Response: The agency disagrees and determined that the rule sufficiently describes the criteria for taking action under TEC, §12.115(a), and that the informal procedures required under TEC, §12.116(a), allow the charter holder to demonstrate any relevant information regarding the sanction selected.

Comment: Concerning §100.1022, the TCSA stated that the proposed rule describes several criteria, some of minor importance, which would justify revocation.

Agency Response: The agency disagrees and determined that the rule appropriately reflects the authority provided to the commissioner under TEC, §12.115(a).

Comment: Concerning §100.1022, the TCSA stated that the proposed rule omits the consideration of the accreditation status of the charter school as required by TEC, §12.115(b).

Agency Response: The agency disagrees and determined that the charter school's accreditation status is considered in existing rules codified in 19 TAC Chapter 97 as required by TEC, §12.115(b).

Comment: Concerning §100.1022, the TCSA stated that the proposed rule is effectively meaningless because a charter school

has no opportunity to present evidence regarding the criteria before action is taken.

Agency Response: The agency disagrees and determined the charter holder is afforded an opportunity to present evidence through an informal review and a State Office of Administrative Hearings (SOAH) review of the decision as required under TEC, §12.116.

Comment: Concerning §100.1022, the TCSA stated that the proposed rule provides the charter school with no opportunity to demonstrate that the school should continue to operate despite the violation.

Agency Response: The agency disagrees and determined the charter holder is afforded an opportunity to present relevant evidence through an informal review and a SOAH review of the decision as required under TEC, §12.116.

Comment: Concerning §100.1022(b)(2)(B), the Andrews Kurth, LLP, stated that the proposed rule should be changed from "academically acceptable" to "met standard."

Agency Response: The agency disagrees and determined that the rules state that "academically acceptable" is defined in §100.1001(26), which includes "met standard" as an "academically acceptable" rating for the years 2013-2016.

Comment: Concerning §100.1022(b)(2)(F), the Texas AFT stated the proposed rule should include the phrase "using meaningful, research based criteria."

Agency Response: The agency disagrees and determined that the rule accurately reflects the authority granted under TEC, §12.115(a), and that further limitations on the criteria used are unnecessary.

Comment: Concerning §100.1022(c)(1)(A)(ix), Austin Achieve and Responsive Education Solutions stated that the proposed rule should not require a charter school to remove a lien, levy, or garnishment within 30 days.

Agency Response: The agency disagrees and determined that the rule accurately reflects the authority granted under TEC, §12.115(a), and that the existence of a lien, levy, or garnishment for more than 30 days reflects a failure to comply with generally accepted standards of fiscal management.

Comment: Concerning §100.1022(h), the TCSA, KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, Choose to Succeed, Azleway Charter School, State Representative David Simpson, and one individual stated that the proposed rule should not include a lien, warrant hold, or judgment lien in the definition of "imminently insolvent."

Agency Response: The agency disagrees and determined that the rule accurately reflects the authority granted under TEC, §12.115(a), and that the existence of lien, warrant hold, or judgment lien reflects a condition of being "imminently insolvent." Specifically, Texas and federal law provide sufficient protections and procedures to challenge, litigate, and appeal disputed claims leading to the entry of a lien, warrant hold, or judgment lien. The agency has also determined that Texas law, including the Texas Property Code, Chapter 52, allows charter holders to avoid the establishment of, and to discharge and cancel, a judgment lien.

Comment: Concerning §100.1022(h)(1), the Southwest Preparatory School and an individual stated that the proposed

rule should be deleted from the definition of "imminently insolvent," or changed to read "has incurred current liabilities in excess of net assets."

Agency Response: The agency disagrees and determined that the rule accurately reflects the authority granted under TEC, §12.115(a), and appropriately defines "imminently insolvent" to include "has incurred liabilities in excess of net assets."

Comment: Concerning §100.1022(h)(1), an individual stated that the proposed rule should be deleted from the definition of "imminently insolvent" or changed to require a comparison that shows liabilities are at risk of exceeding assets.

Agency Response: The agency disagrees and determined that the rule accurately reflects the authority granted under TEC, §12.115(a), and appropriately defines "imminently insolvent" to include "has incurred liabilities in excess of net assets."

Comment: Concerning §100.1021, the TCTA expressed appreciation for the great deal of work that went into these rules, specifically the extensive and inclusive language.

Agency Response: The agency appreciates the comment.

§100.1032, Standards for Discretionary Renewal.

Comment: Concerning §100.1032, two individuals requested the removal of the requirement to have 50% of students in tested grades.

Agency Response: The agency assumes the commenters are referring to §100.1032(3)(C)(ii). If so, the agency disagrees and has determined that a school must be held accountable for the academic performance of its students. The TEC requires the commissioner to make renewal decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. This standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal.

Comment: Concerning §100.1032(3)(C)(ii), Legacy Academy Charter maintained that meeting the 50% criteria presents a challenge to small charters and start-up charters and asserted that they need a different set of criteria due to the fact that it takes time to bring large numbers of students with academic gaps up to grade level.

Agency Response: The agency disagrees and has determined that a school must be held accountable for the academic performance of its students. The TEC requires the commissioner to make renewal decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. This standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal. Having large amounts of students with performance gaps does not preclude a charter from striving to serve, by its fifth year of operations, at least as many students in grades assessed for

state accountability as those served in grades not assessed for state accountability.

Comment: Concerning §100.1032(3)(C)(ii), Lumin Education raised concerns that the proposed rule will create an obstacle for the development of early childhood charter schools. Lumin Education maintained that the Texas Primary Reading Inventory (TPRI) can be used to assess the progress of younger students.

Agency Response: The agency disagrees and has determined that a school must be held accountable for the academic performance of its students. The TEC requires the commissioner to make renewal decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. This standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal. Annual reports outlined in the statute require the evaluation of charters. Having standardized performance criteria allows for a like comparison of charter performance.

Comment: Concerning §100.1032(3)(C)(ii), State Representative David Simpson stated his concern on requiring 50% of students to be in tested grades and requested reconsideration of the rule.

Agency Response: The agency respectfully disagrees and has determined that a school must be held accountable for the academic performance of its students. The TEC requires the commissioner to make renewal decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. This standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal.

Comment: Concerning §100.1032(3)(C)(iii), Rhodes School stated that existing charter contracts may reflect less students than the proposed 500-student minimum.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served. The agency notes that a charter school must be held accountable for the academic performance of its students. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter.

Comment: Concerning §100.1032(3)(C)(iii), Houston Heights Learning Academy Charter stated that 500 students for renewal is an arbitrary number, especially if Charter FIRST or accountability ratings are in good standing. Additionally, Houston Heights Learning Academy Charter cited a conflict of a charter contract requiring less students.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served. The agency notes that a

charter school must be held accountable for the academic performance of its students. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter.

Comment: Concerning §100.1032(3)(C)(iii), Life School commented that smaller campuses are desirable based on lack of facilities funding and noted that growing the charter to 500 students by the five-year renewal date is difficult.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served. The agency notes that a charter school must be held accountable for the academic performance of its students. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter.

Comment: Concerning §100.1032(3)(C)(iii), Trinity Charter School stated that the student/teacher ratio for a charter operating in a residential facility licensed through Child Protective Services (CPS) has requirements specific to the facility and noted that meeting the 500-student requirement presents a challenge.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served. In addition, the agency has modified §100.1032(3)(C) at adoption to add an exemption for charters operating in residential facilities.

Comment: Concerning §100.1032, Houston A+ Challenge commented on the criteria for renewal of a charter stating that until the performance frameworks are finalized, only the four criteria listed in statute should be used for non-renewal or expiration. Houston A+ Challenge noted that 56 different possible criteria for renewal are listed. Houston A+ Challenge also noted that there are mitigating circumstances especially for English as a second language/bilingual education qualified teacher shortages.

Agency Response: The agency disagrees. Statute conveys authority upon the commissioner to non-renew a charter for failure to meet multiple criteria. The majority of the criteria fall under the categories of governance, operational, academic, and financial standards. The Charter School Performance Framework will be adopted in the future to reflect the standards prior to the charter renewals.

Comment: Concerning §100.1032, the TLCCS commented that the rule destabilizes charter schools and is overly burdensome to have any infraction from the list of criteria to be a possible reason to non-renew. The TLCCS stated that an overcomplicated regulatory environment will suffocate charters.

Agency Response: The agency disagrees. At the time of renewal, an authorizing entity should consider the entire health of the entity. The criteria listed in the rule is intended to provide charters some transparency as to what the criteria are for such a consideration. The rule is preceded by permissive language stating that the commissioner may use the criteria listed to make a discretionary renewal decision. The Charter School Performance Framework is currently being created and may incorporate many of the criteria currently being used by the TEA to ensure that high-quality charters continue in operation.

Comment: Concerning §100.1032, two individuals stated that the rule should be revised and should not establish a system

by which an evaluation of a violation of any one of the 56 performance criteria may be the basis for non-renewal at the sole discretion of the commissioner. The individuals also stated that the rule does not provide for due process.

Agency Response: The agency disagrees and determined that the rule's language is permissive stating, "the commissioner may non-renew." The performance criteria listed have been part of the commissioner's review of charters in previous years. The rule is intended to provide transparency regarding discretionary renewal decisions. This rule does not govern due process proceedings available under 19 TAC Chapter 157, Subchapter EE. The agency's responses to comments to those proposed rules are published separately.

Comment: Concerning §100.1032, KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented on the renewal requirements, stating that no singular item should be used to revoke a charter and that the list should be considered as minor infractions and taken as a whole. The commenters stated that while a charter school should come into compliance with the new requirements such as the posting of superintendent salaries on school websites, they did not believe that the legislature intended to put a school out of business for one infraction or for missing a posting deadline by accident. Regarding the failure to report child abuse, the commenters stated that this would be a serious and grievous error by a single staff member. Despite that, the commenters did not believe the legislative intent in SB 2 was to close down a school due to one serious error, and that an entire student body should not be displaced for one employee's mistake.

Agency Response: The agency disagrees. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety. The criteria listed in the rule is intended to provide charters some transparency as to what the criteria are for such a consideration. The rule is preceded by permissive language stating that the commissioner may use the criteria listed to make a discretionary renewal decision. The Charter School Performance Framework is currently being created and may incorporate many of the criteria currently being used by the TEA to ensure that high-quality charters continue in operation. It is not the intent, nor has it been the practice, of the agency to use any minor infraction as the basis for non-renewal.

Comment: Concerning §100.1032, the TCSA commented on the rule referencing discretionary renewal. The TCSA proposed to amend the proposed rule to establish a placeholder for the performance frameworks and the annual evaluations thereunder as the sole discretionary renewal tool.

Agency Response: The agency disagrees. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety. The Charter School Performance Framework is currently being created and may incorporate many of the criteria currently being used by the TEA to ensure that high-quality charters continue in operation; however, that framework may not include all criteria used for review. The statute outlines that the renewal decision, "must take into consideration a charter's performance on the framework," but does not indicate it is the sole consideration.

Comment: Concerning §100.1032, the TCSA commented on the criteria for renewal, stating that representatives of the charter holder should have a right to be present at the informal review to present evidence and information supporting renewal of the

charter and the final decision by the commissioner should reflect consideration of that evidence. The TCSA stated that both due process and quality charter authorizing require meaningful and robust opportunity for a charter to make its case before the authorizer before the final decision is made.

Agency Response: The agency disagrees. Section 100.1032 does not describe the informal review process in 19 TAC Chapter 157, Subchapter EE. The agency's response to comments on the proposed revisions to 19 TAC Chapter 157, Subchapter EE, are published separately.

Comment. Concerning §100.1032, the TCSA stated that the proposed rule establishes 56 possible criteria for discretionary renewal, the violation of any one of which, no matter how minor the violation or the frequency of the violation, may be basis for non-renewal of the charter contract. The TCSA stated that the decision is entirely within the discretion of the commissioner with no opportunity for the charter to present corrective measures or mitigating factors to demonstrate that the charter should be renewed. The TCSA noted that many of the 56 criteria upon which the commissioner may non-renew a charter contract are for relatively minor compliance violations that in no way reflect the charter school's performance overall or the progress the charter school is making with its students. The TCSA also noted that the intent and purpose of TEC, §12.1141, enacted by SB 2, was to put into statute performance-based renewal standards that aligned with best practices for quality charter authorizers. The TCSA stated that TEC, §12.1141, directs the commissioner to restructure the renewal process as a means of measuring the performance of the school and not to use the renewal process as a tool to sanction a charter for a myriad of compliance violations.

Agency Response: The agency disagrees. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety. The criteria listed in the rule is intended to provide charters some transparency as to what the criteria are for such a consideration. The rule is preceded by permissive language stating that the commissioner may use the criteria listed to make a discretionary renewal decision. The Charter School Performance Framework is currently being created and may incorporate many of the criteria currently being used by the TEA to ensure that high-quality charters continue in operation. It is not the intent, nor has it been the practice, of the agency to use an isolated minor infraction as the basis for non-renewal.

Comment: Concerning §100.1032, Uplift Education stated that some weight should be given to short-term conditions that may be corrected and that should be translated through rules.

Agency Response: The agency disagrees that a rule change is necessary. It is not the intent, nor has it been the practice, of the agency to use an isolated minor infraction as the basis for non-renewal.

Comment: Concerning §100.1032, Lumin Education commented that renewal requirements should add an opportunity for the charter holder to address the violations that would cause the charter to not be renewed.

Agency Response: The agency disagrees. The agency expects each charter operator to use the criteria listed in the rule as a checklist to ensure compliance as the charter school approaches its contract end date and to be proactive in meeting performance standards as well as compliance measures. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety before making a renewal decision.

Comment: Concerning §100.1032, an individual commented that the standards for renewal should add an opportunity for the charter holder to address the violations that would cause the charter to not be renewed and more due process. The individual recommended that technical shortcomings should place a charter school on probation, not immediate revocation.

Agency Response: The agency disagrees. Renewal process is distinct from the revocation process and will be applied accordingly. The agency expects each charter operator to use the criteria listed in the rule as a checklist to ensure compliance as the charter school approaches its contract end date and to be proactive in meeting performance standards as well as compliance measures. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety before making a renewal decision.

Comment: Concerning §100.1032, the TCTA commented that the standards for renewal are good and should be helpful in ensuring high-performing charter school performance.

Agency Response: The agency appreciates the comment.

Comment: Concerning §100.1032(3)(C)(i) and (ii), Jubilee Academic Center stated that if a charter school cannot demonstrate enrollment and stability to a lender, it cannot borrow money to construct facilities and that this process takes time to develop a start-up campus and generally begins with expansion sites and feeder sites that eventually grow into stand-alone campuses. Jubilee Academic Center commented that in the past, and currently, the expansion sites operated as overflow sites and allowed Jubilee (and many other charter schools) to serve students who would otherwise remain on the wait list. Jubilee Academic Center commented that the proposed rules simply will not permit these practices.

Agency Response: The agency disagrees and has determined that a school must be held accountable for the academic performance of its students. Statute requires the commissioner to make decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. A standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal.

Comment: Concerning §100.1032(3)(C)(i) and (ii), given the absence of a definition of an open-enrollment charter school, Rise Academy questioned the basis for the rules defining an open-enrollment charter in this restrictive way. Rise Academy stated that the only mention in the law of a minimum number of students comes in TEC, §12.065(b-4), where it states that an already existing charter school cannot open a new campus unless its current campus has at least 50% of its students in testable grades. Rise Academy commented that this is an ill-conceived provision in the law, but it does not define an initial charter school campus as one at which 50% of students are in testable grades. Rise Academy further stated that there appears to be no provision in the law that states that the commissioner may, on his own, define a charter school, with the only possible exception being TEC, §12.110(a), regarding the charter application. Rise Academy stated that this excessively restrictive definition of an open-enrollment charter school in the rules prohibits small charter start-ups from having any real chance in obtaining a charter

"contract." Rise Academy also stated that this definition allows the commissioner to deny the renewal of a charter under the discretionary renewal process for possibly this reason alone, further marginalizing smaller charter operators.

Agency Response: The agency disagrees and has determined that a school must be held accountable for the academic performance of its students. Statute requires the commissioner to make decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. A standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations. In addition, the renewal process is distinct from the revocation process and will be applied accordingly. The agency expects each charter operator to use the criteria listed in the rule as a checklist to ensure compliance as the charter school approaches its contract end date and to be proactive in meeting performance standards as well as compliance measures. At the time of renewal, an authorizing entity should consider the health of the entity in its entirety before making a renewal decision. The agency has recognized that the 50% standard for the granting of charters would be problematic, but has determined that the standard should apply by the time of renewal.

Comment: Concerning §100.1032(3)(C)(i) and (ii), Trinity Charter School commented that the requirements of 50% of students in tested grades and a 100-student minimum per site for a residential facility licensed through CPS are not feasible or conducive to its student population.

Agency Response: The agency partially agrees that residential facilities are unique in their populations and are sometimes constrained by the facility in their student capacity. In addition, the agency has modified §100.1032(3)(C) at adoption to add an exemption for charters operating residential facilities.

Comment: Concerning §100.1032(3)(C)(ii), Houston Heights Academy commented that 50% of students in tested grades creates a negative impact on schools with a mission for quality pre-kindergarten through Grade 2 population.

Agency Response: The agency disagrees and has determined that a school must be held accountable for the academic performance of its students. Statute requires the commissioner to make decisions based on student performance on state academic performance tests. Without a representative size, the accountability ratings will not accurately reflect the performance of a campus or a charter. A standard is necessary to ensure high-quality charters and to facilitate decisions regarding the growth or expansion of charter operations as well as the continuation of operations.

Comment: Concerning §100.1032(3)(C)(iii), the TCSA rejected the presumption underlying the proposed rules that schools with less than 500 students cannot be financially viable. The TCSA stated that charter school applicants and operators who are burdened already with increasing federal and state compliance standards should not have the additional burden to prove their worthiness as small schools. The TCSA stated that the rules as proposed are likely to have a chilling effect on the creation and sustenance of small charter schools, particularly since the proposed rules do not provide the standards by which the commissioner will judge the merits of any application or charter amendment that is present to waive the general rule.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served.

Comment: Concerning §100.1032(3)(C)(iii), Austin Achieve commented that it is confusing that it would be mandated that charter schools serve at least 500 students. Austin Achieve noted that Montessori for All was just approved to open an 18th generation charter school, and, like Austin Achieve, the charter was approved unanimously. Austin Achieve stated that the Montessori for All charter will serve Pre-Kindergarten through Grade 8 with 50 students in each grade level for a total of 450 students and noted that it would be arbitrary to establish 500 as a minimum threshold when students can be well served with fewer than 500 students.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served.

Comment: Concerning §100.1032(3)(C)(iii), Lumin Education commented that requiring a minimum number of students for each charter campus would discount the success of small charters that are successful both academically and financially.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served.

Comment: Concerning §100.1032(3)(C)(iii), an individual commented that the commitment to serving a minimum of 500 students for applicants or as a condition for renewal promotes the warehousing of children at risk for dropping out. The individual stated that this assumes that the smaller charter schools cannot be financially viable and also stated that special populations benefit from low teacher/student ratios and smaller class sizes.

Agency Response: The agency agrees and has modified §100.1032(3)(C)(iii) at adoption to align with changes made to §100.1015(b)(1)(D) at adoption and to reduce the minimum number of students to be served.

Comment: Concerning §100.1032(3)(C)(iii), State Representative David Simpson commented that placing arbitrary conditions on charter holders was not contemplated by the legislature. The representative stated that charter entities were envisioned as labs of educational innovation and that to require that an entity meet these standards reduces the number of options that may otherwise be found. The representative also stated that while these rules do have the caveat of being waived by "discretion of the commissioner," recent experience confirms his belief that discretion should be limited when placed in the hands of a government bureaucracy.

Agency Response: The agency respectfully disagrees that the conditions placed on charter holders are arbitrary. The agency takes its fiduciary responsibilities seriously and has endeavored to fulfill its statutory direction of providing accountability and flexibility for charter operators.

Comment: Concerning §100.1032(3)(C)(vi), the Texas AFT commented that the rule needs to clarify that the facility must be used for educational purposes only.

Agency Response: The comment is outside the scope of the current rule proposal.

§100.1033, Charter Amendment.

Comment: Concerning §100.1033, Uplift Education commented that the proposed rule makes it more difficult to obtain an amendment, which may consequently limit growth plans of charters. Uplift Education noted that substantive amendments that are denied by the commissioner are final and charters have to wait a year to submit new amendment requests.

Agency Response: The agency partially agrees. Amendments are approved or denied after a comprehensive review of all relevant information. Repeated appeals of the same amendment request are a duplicitous expenditure of time, effort, and resources. Proposed §100.1033(c)(6), adopted as §100.1033(b)(8), has been modified at adoption to remove the term *substantially similar*.

Comment: Concerning §100.1033(b), Andrews Kurth, LLP, commented that non-substantive amendments should include the §100.1033(c)(8)(D) "Additional Campus" amendment.

Agency Response: The agency disagrees and provides the following clarification. All amendment changes are substantive based on the plain meaning of the word substantive. Section 100.1033 has been modified at adoption to remove references to substantive and non-substantive. The rule will clearly identify timelines for both expansion amendments and non-expansion amendments.

Comment: Concerning §100.1033(b)(1), Andrews Kurth, LLP, commented that the rule should reflect "on any date" after "(TEA) division responsible for charter schools" to reflect that non-expansion amendments may be filed at any time.

Agency Response: The agency agrees. New §100.1033(b)(2) was added at adoption to allow non-expansion amendments to be filed at any time.

Comment: Concerning §100.1033(c)(6), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that if a school submits an amendment that is rejected for a certain reason, the school would be by rule prohibited to address and correct the reason the original amendment was expanded. The commenters stated that in essence, should a school make a minor filing error, it is not allowed to correct the error.

Agency Response: The agency provides the following clarification. Agency staff work with charter schools to submit the correct information on amendments prior to commissioner review. The amendments are approved or denied after a comprehensive review of all relevant information. Repeated appeals of the same amendment request are a duplicitous expenditure of time, effort, and resources. Proposed §100.1033(c)(6), adopted as §100.1033(b)(8), has been modified at adoption to remove the term *substantially similar*.

Comment: Concerning §100.1033(c), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that the new definitions and requirements of substantive amendments do not seek to improve students' education, stating that they seem to be solutions looking for problems. The commenters stated that their real-world effect will be to hamper growth of charters that are otherwise completely qualified.

Agency Response: The agency disagrees and provides the following clarification. The two categories or types of amendments are expansion amendments and non-expansion amendments. The rule attempted to provide a reference that was clear to operators of the amendment forms. Section 100.1033 has been modified at adoption to clearly articulate the amendment types and the timelines associated with each.

Comment: Concerning §100.1033(c), Andrews Kurth, LLP, commented that the rule should reflect a clear timeline.

Agency Response: The agency disagrees and provides the following clarification. Proposed §100.1033(c)(7)(A)(ii), adopted as §100.1033(b)(9)(A)(ii), clearly articulates the timeline associated with substantive, expansion amendments. Section 100.1033 has been modified at adoption to clearly articulate the amendment types and the timelines associated with each.

Comment: Concerning §100.1033(c)(7)(A)(ii), KIPP, Responsive Education Solutions, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, Choose to Succeed, and Uplift Education commented on campus amendment requests and the time it takes for planning an expansion to a new site. The commenters stated that clarity about whether operators can request a site expansion amendment more than one year in advance is needed.

Agency Response: The agency agrees. Proposed §100.1033(c)(7)(A)(ii), adopted as §100.1033(b)(9)(A)(ii), has been modified at adoption to remove language limiting the campus expansion to opening in the school year directly following the submission of the campus expansion.

Comment: Concerning §100.1033(c)(7)(A)(ii), Responsive Education Solutions commented that the window of time given to apply for an amendment does not always align to the needs of the students and communities served. The commenter suggested that a broader window should be given to charters in good standing with the agency.

Agency Response: The agency disagrees. The timeline ensures decisions are made based on the most current accountability data. Charters in good standing that meet exceptions have other avenues to seek flexibility from this provision. However, §100.1033(c)(7)(A)(ii), adopted as §100.1033(b)(9)(A)(ii), has been modified at adoption to clearly articulate the amendment types and the timelines associated with each.

Comment: Concerning §100.1033(c)(7)(A)(iii), KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that they are grateful that the agency has been responsive to concerns on this issue by creating a 90% acceptable campus threshold.

Agency Response: The agency appreciates the comment.

Comment: Concerning §100.1033(c)(7)(B), TCSA, KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed commented that TEC, §12.114(c), requires the commissioner to approve or deny any expansion amendment request, not just an amendment to add a campus, no later than 60 days after the date the charter holder submits a completed request to the commissioner.

Agency Response: The agency agrees. Proposed §100.1033(c)(7)(B), adopted as §100.1033(b)(9)(B), has been modified at adoption to remove the word *campus*.

Comment: Concerning §100.1033(c)(8)(D), TCSA and Lumin Education commented that the statute is clear that notice that a charter holder meets the conditions under TEC, §12.101(b-4), is all that is required of a charter holder, and even if the commissioner does not respond to this notice, the charter holder may establish the new campus.

Agency Response: The agency partially agrees. The rule as proposed did not clearly provide for an amendment process for charters meeting the criteria in TEC, §12.101(b-4)(1). New language was added at adoption in §100.1033(b)(11) to address a quality expansion amendment that allows for such a campus.

Comment: Concerning §100.1033(c)(8)(D), Andrews Kurth, LLP, commented that the following language should be added to the rule: "(v) the newly proposed campus is within the charter school's existing geographic boundaries."

Agency Response: The agency disagrees. Charter schools may file multiple amendments to expand, one being a geographic boundary expansion. A charter school may file a geographic boundary expansion in tandem with a campus expansion.

Comment: Concerning §100.1033(c)(8)(D), Uplift Education commented that the expansion amendment for new sites (additional campus) uses the term *district rating*, in §100.1033(c)(8)(D)(ii)(III), which does seem to take into account charter holders with multiple charters, but this is the only section that appears to do so. Uplift Education suggested that clarification is needed for charter holders with multiple charters.

Agency Response: The agency provides the following clarification. The statute uses the term *district rating* and, as such, the rule mirrors the statutory language. Charter holders with multiple charters receive multiple ratings associated with the county-district number assigned to each individual charter school. Expansions are tied to the county-district number.

Comment: Concerning §100.1033(c)(8)(D), Lumin Education, TCSA, and several individuals commented that alignment of the rule with TEC, §12.101(b-4), is needed to include: "the charter that has at least 50% of the student population in tested grades AND a charter holder that has at least 50% of the students in the grades assessed having been enrolled in the school for at least 3 school years."

Agency Response: The agency agrees. New language was added at adoption in §100.1033(b)(11) to address a quality expansion amendment that allows for such a campus charter meeting the criteria in TEC, §12.101(b-4).

Comment: Concerning §100.1033(c)(9)(A)(ii)(II), the TCTA opposed the language regarding the alternative academic accountability rating system. The TCTA stated that parents and the public are not aware of this alternative system and the lower standards under which ratings may be awarded.

Agency Response: The agency disagrees. The alternative academic accountability system is available to all charter schools and traditional districts that meet the criteria. This is public information.

Comment: Concerning §100.1033(c)(9)(A)(vi), Houston A+ Challenge commented that the rule specifies that a new charter school will serve 100 students rather than 50 and recommended that the previous language should be used.

Agency Response: The agency disagrees. Proposed §100.1033(c)(9), adopted as §100.1033(b)(12), relating to new school designation, allows a charter school to be eligible to

apply for federal Charter School Start-Up Program funds. The change in number is data driven and supports the academic viability of a campus. The commissioner has statutory authority to set operational standards for high-quality charters.

Comment: Concerning §100.1033(c)(9), Responsive Education Solutions commented that Texas has been under the waiver for adequate yearly progress (AYP) for several years and will likely continue to hold the waiver, so the requirement referencing AYP and staging is out of date.

Agency Response: The agency agrees. Proposed §100.1033(c)(9)(A)(iii), adopted as §100.1033(b)(12)(A)(iii), has been modified at adoption to read: "no charter campus has been identified for federal interventions in the most current report."

§100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

Comment: Concerning §100.1035, Uplift Education commented that requiring compliance information for each employee of the charter school is overly broad and fails to take into consideration that the larger charter holders may have in excess of 1,000 employees. Uplift Education suggested that this rule should distinguish between employees or board members, as reflected in subsection (a)(1)-(3), and noted that to require all this information for every employee is burdensome.

Agency Response: The agency disagrees. The applicability of this rule to all employees can be found in subsection (b)(1)-(7) and is not overly broad. In addition, TEC, §12.120, provides authority for the breadth of the provisions of this rule.

Comment: Concerning §100.1035, Responsive Education Solutions commented that the change to §100.1035(a)(2) is a good change, noting that it reflects best practice and should be something that all charter holders do anyway. Responsive Education Solutions commended the agency for incorporating the change into this rule set.

Agency Response: The agency appreciates the support of its proposed language.

§100.1041, State Funding.

Comment: Concerning §100.1041(d), the TCSA, Lumin Education, and several individuals commented that the rule is inconsistent with §100.1033(c)(8)(D)(iv), which provides that an amendment to relocate an existing campus site while still serving the same students and grade levels is not an expansion amendment.

Agency Response: The agency agrees the rule is unclear and provides the following clarification. All amendments to the charter, expansion and non-expansion, must be approved by the commissioner of education before the related activities are eligible for funding. Section 100.1041(d)(1) has been modified at adoption to provide additional clarity.

§100.1047, Accounting for State and Federal Funds.

Comment: Concerning §100.1047, the Texas AFT commented that tighter rules are needed to ensure financial transparency and full disclosure of all financial information related to public dollars used for management of charter schools.

Agency Response: The agency disagrees. Current requirements in TEC require a charter governing board to approve and submit their annual audit pursuant to Local Government Code, §140.005. The Annual Financial Report (AFR) submitted to the agency and made available publicly in its entirety on

the agency's website provides a full disclosure of all financial information.

§100.1050, Disclosure of Financial Information.

Comment: Concerning §100.1050, an individual commented on the disclosure of financial information, requesting a change in language and the addition of an exception for residential facilities. The individual stated that this proposed rule exceeds the statutory requirements that the financial statement of the charter be posted to the website. The individual stated that the annual audit is not the financial statement and this rule assumes that all charter schools are the sole operation of the charter holders.

Agency Response: The agency agrees and provides the following clarification. Local Government Code, §140.005 and §140.006, reference the annual financial statement, which is a section of the Annual Financial Report (AFR). The governing body of a charter approves and submits the AFR to the agency, which is then available publicly in its entirety on the agency's website. The intent of the agency was to facilitate the requirement of the continuous posting of said financial statement since it is a section of the AFR. Section 100.1050 has been modified at adoption to align with the requirement in Local Government Code, §140.005 and §140.006, to reflect the required posting of the annual financial statement.

Comment: Concerning §100.1050, the TCTA commented on the disclosure of financial information. The TCTA expressed support for the language as written.

Agency Response: The agency appreciates the comment but provides the following clarification. Local Government Code, §140.005 and §140.006, reference the annual financial statement, which is a section of the AFR. The governing body of a charter approves and submits the AFR to the agency, which is then available publicly in its entirety on the agency's website. The intent of the agency was to facilitate the requirement of continuous posting of said financial statement since it is a section of the AFR. Section 100.1050 has been modified at adoption to align with the requirement in Local Government Code, §140.005 and §140.006, to reflect the required posting of the annual financial statement.

Comment: Concerning §100.1050, the TCSA recommended that the rule be revised to align with the statutory authority upon which the rule is based. SB 2 amended Local Government Code, §140.006, to require the governing board of an open-enrollment charter school to ensure that the school's financial statement is posted continuously on the school's Internet website.

Agency Response: The agency agrees and provides the following clarification. Local Government Code, §140.005 and §140.006, reference the annual financial statement, which is a section of the AFR. The governing body of a charter approves and submits the AFR to the agency, which is then available publicly in its entirety on the agency's website. The intent of the agency was to facilitate the requirement of continuous posting of said financial statement since it is a section of the AFR. Section 100.1050 has been modified at adoption to align with the requirement in Local Government Code, §140.005 and §140.006, to reflect the required posting of the annual financial statement.

§100.1063, Use of Public Property by a Charter Holder.

Comment: Concerning §100.1063, the TCSA commented that the proposed amendments would change the nature of prop-

erty ownership through rulemaking. The TCSA requested that the commissioner postpone the adoption of any changes to the public property rules and form a stakeholder working group or task force to effectuate the intent and meaning of the statutory change that does not disturb the fundamental ownership interest of a charter holder upon the purchase or lease of property. The TCSA added that, in lieu of the proposed amendments, the commissioner should adopt in rule a well-defined methodology that ensures the state's interest in property purchased or leased with state funds is preserved upon closure of a charter school. The TCSA stated that such a methodology should acknowledge the rights of the state, the charter holder, and any creditors, but not infringe upon the charter school's ability to retain legal title of the property. The TCSA added that the commissioner should reconsider whether the change to TEC, §12.128(a)(2), necessitates a change in rules, particularly given the potentially devastating impact the proposed rule may have on the charter school sector.

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

Comment: Concerning §100.1063, the TCSA commented that the proposed rule fundamentally changes the long standing legal principle that a charter holder holds legal title to the property with which it is entrusted to use for the benefit of the students attending the charter school. The TCSA requested that the commissioner reconsider the proposed amendments, which may have a devastating impact on the charter school financing sector. The TCSA added that the change exceeds both the authority and the intent of the statutory change made to TEC, §12.128(a)(2).

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

Comment: Concerning §100.1063, Houston A+ Challenge stated that clarification is needed on whether there is any impact in the section if private property is being used as a facility. Houston A+ Challenge expressed concern that this section will jeopardize future and current financing for facilities.

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

Comment: Concerning §100.1063, the Lumin Education commented that this rule is unnecessary because it merely reiterates that a charter holder is a nonprofit and exists for the benefit of the public. Lumin Education added that addressing or clarifying issues concerning property rights will shift the focus of charters away from providing quality education to children.

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

Comment: Concerning §100.1063, the TCTA commented it appreciates clarification that public property is owned by this state and is held in trust by the charter holder for the benefit of the students of the open-enrollment charter school, particularly as more charter schools seek to acquire property and facilities. The TCTA added that given the percentage of charter schools that have failed or had their charters revoked, this clear articulation of public property is essential.

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

Comment: Concerning §100.1063, KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed stated that lenders and investors require the charter holder to have clear ownership and that "shifting that to outright state ownership" in the rules will shut off this source of funding to purchase property.

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions from relating to public property.

Comment: Concerning §100.1063, KIPP, Responsive Education Solutions, Uplift Education, YES Prep Public Schools, IDEA Schools, Harmony Public Schools, and Choose to Succeed stated that lenders and investors receive "some form of federal subsidy in the form of tax credits," which require that the "charter school borrower have direct ownership of the property."

Agency Response: The agency agrees in part and disagrees in part and has determined that TEC, §12.128, clearly sets forth the ownership of property purchased or leased with state funds. However, in order to engage in further discussions regarding the concerns expressed in this comment, the agency is removing certain proposed provisions relating to public property.

§100.1205, Procurement of Professional Services.

Comment: Concerning §100.1205(c)(2), the Texas Academy of Physician Assistants (TAPA) commented that the exclusion of the term *physician assistant* in the rule violates Texas law in that it limits the practice of physician assistants.

Agency Response: The agency disagrees that §100.1205(c)(2) should be changed to include physician assistants. The current language reflects the professional services authorized under Texas Government Code, Chapter 2254, Subchapter A. The agency notes that the TAPA quoted language referencing the "DADS Guardianship Services Program," which is not found in §100.1205(c)(2).

§100.1207, Student Admission.

Comment: Concerning §100.1207, Houston A+ Challenge commented that the rule language should be amended to align with recent federal changes in charter admissions to allow for weights aimed at ensuring racial and economic diversity. Houston A+ Challenge cited the USDE Charter Schools Program Non-regulatory Guidance, dated January 2014.

Agency Response: The agency partially agrees. Although the USDE Charter Schools Program Non-regulatory Guidance, dated January 2014, allows for the use of weighted lotteries, specific language defers to the state statute. TEC, §12.117, does not reference weighted lotteries.

Comment: Concerning §100.1207(f), Houston A+ Challenge and the TCSA commented that the agency should clarify secondary boundary and how charters can accept such students if spaces are available in a timely manner.

Agency Response: The agency agrees. Section 100.1207(f) has been modified at adoption to provide clarifying language. Electing to serve students from a secondary boundary is a choice of the charter school. If a charter school has been approved and has established both a primary and secondary boundary in its open-enrollment charter, students residing within the secondary geographic boundary will be considered for enrollment after students from the primary geographic boundary, who have submitted a timely admission application, have been enrolled. Having a primary and secondary boundary allows the charter to focus on serving students from a particular area first and then, if not over-subscribed or at their maximum enrollment, allows the charter the flexibility to include students from their secondary boundary.

§100.1215, Instructional Facilities.

Comment: Concerning §100.1215, Houston A+ Challenge asked about the criteria for occupancy permits. Houston A+ Challenge commented that there should be allowances for flexibility for new, emerging models to take advantage of community resources for improved student learning and opportunities, including shared facility spaces, which might include museums, office buildings, libraries, hospitals, and other public and private facilities.

Agency Response: The agency disagrees. The safety and well-being of Texas schoolchildren is a primary concern for the agency. A certificate of occupancy is a local permit that provides assurances to the agency that all learning environments across the state are safe and appropriate for the education of the children of the state of Texas.

Comment: Concerning §100.1215(c), the TCSA commented that the commissioner should amend the rule to allow a charter an opportunity to cure the infraction prior to commissioner action. The TCSA stated that the rule should be clarified to indicate that a single or temporary violation is not grounds for adverse commissioner action.

Agency Response: The agency disagrees. Language is permissive implying such a violation may constitute a material violation. Operating at an unapproved facility void of a certificate of occupancy does not allow the commissioner to ensure the safety and well-being of students and could potentially place them in harm's way.

§100.1217, Eligible Entity; Change in Status or Revocation.

Comment: Concerning §100.1217, several individuals commented that a failure to submit an Internal Revenue Service (IRS) Form 990 or even a tax lien does not change the status of the entity that committed the alleged violations.

Agency Response: The agency disagrees. The IRS does remove the tax exempt status of a 501(c)(3) nonprofit entity for failure to file the necessary forms required by the IRS, and once the IRS acts, the affected nonprofit entity is no longer an "eligible entity" as required in TEC, §12.101(a)(3).

DIVISION 1. GENERAL PROVISIONS

19 TAC §§100.1001 - 100.1007, 100.1010, 100.1015, 100.1017

The new sections and amendments are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.1055, which authorizes the commissioner to enforce state law and rules relating to nepotism; TEC, §12.1059, which authorizes the agency to approve certain employees for positions in schools; TEC, §12.110, which authorizes the commissioner to adopt an application form and procedures to be used in applying for an open enrollment charter; TEC, §12.1101, which authorizes the commissioner to adopt rules for the procedure for providing notice to boards of trustees of a school district and members of the legislature of charter applications that may impact them; TEC, §12.111, which authorizes what a charter must include in order to be granted; TEC, §12.113, which authorizes that a successful charter must satisfy all of TEC, Chapter 12, Subchapter D, and requirements of the application and any required modifications; TEC, §12.114, which authorizes the commissioner to adopt rules for the process to be used to request a revision of a charter of an open-enrollment charter school; TEC, §12.117, which authorizes how the admissions process of an open-enrollment charter school shall occur; TEC, §12.1181, which authorizes the commissioner to develop performance frameworks and adopt rules to implement the performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.119, which authorizes the commissioner to require the annual filing of the charter's articles of incorporation, bylaws, and governance reporting information with the agency; TEC, §12.120, which mandates under which circumstances an individual may or may not serve on a governing body of a charter holder or charter school or serve as an employee; TEC, §12.1202, which authorizes that a majority of the governing body of a charter holder or charter school must be qualified voters; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.1211, which requires an open-enrollment charter school to maintain on the home page of its Internet website the names of its governing body; TEC, §12.123, which authorizes the commissioner to adopt rules necessary for prescribing and implementing the required training for members of the governing bodies of

charter schools and officers of charter schools; TEC, §12.126, which authorizes under what circumstances the commissioner may prohibit, deny renewal of or revoke a contract for management services; TEC, §12.129, which requires all teachers and principals employed in an open-enrollment charter school hold a baccalaureate degree; TEC, §12.152, which authorizes the commissioner to grant charters on application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement colleges and university or junior college charter schools; TEC, §12.154, which authorizes the commissioner to establish criteria that must be satisfied for the granting of a charter to a public senior college or university or public junior college; Local Government Code, §140.006, which requires an open-enrollment charter school to post its annual financial statement on the school's Internet website; and Local Government Code, §171.004, which authorizes how all local public officials with a substantial interest in a business entity or real property shall conduct their affairs.

The new sections and amendments implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.1055, 12.1059, 12.110, 12.1101, 12.111, 12.113, 12.114, 12.117, 12.1181, 12.119, 12.120, 12.1202, 12.121, 12.1211, 12.123, 12.126, 12.129, 12.152, 12.153, and 12.154 and Local Government Code, §140.006 and §171.004.

§100.1001. Definitions.

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in Texas Education Code (TEC), §12.1012.

(2) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.

(A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.

(B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.

(3) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to TEC, §12.101, identified with its own county district number.

(A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.

(B) An "employee of a charter holder," as used in this subchapter, means a charter holder employee who engages in no charter school activity and is not an officer of any charter school.

(C) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the

Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting. A campus may be a single site or may include multiple sites as described in subparagraph (D) of this paragraph.

(D) A charter school "site," as used in this subchapter, means an organizational unit of a charter school with administrative personnel identified by a separate street address within 50 miles of the campus with which it is associated and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE or commissioner or in an amendment granted under §100.1033(b)(10) of this title (relating to Charter Amendment).

(E) A charter school "facility," as used in this subchapter, means a building located on the same contiguous land as the campus with which it is associated or within one mile of the campus. The facility and its associated address must be approved for instructional use through the submission of a certificate of occupancy (COO) to the commissioner prior to serving students in said facility.

(4) Real estate--An interest, including a lease interest, in real property recognized by Texas law, or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.

(5) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.

(6) Personal property--An interest in personal property recognized by Texas law, including:

(A) furniture, equipment, supplies, and other goods;

(B) computer hardware and software;

(C) contract rights, intellectual property such as patents, and other intangible property;

(D) cash, currency, funds, bank accounts, securities, and other investment instruments;

(E) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and

(F) any other form of personal property recognized by Texas law.

(7) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.

(8) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by the TEA, including all federal funds. The rules in this division apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.

(9) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.

(10) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issued a warrant for such funds before that date, or if an electronic transfer of such funds was made before that date.

(11) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:

(A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or

(B) is extended, in whole or part, based on the charter holder's control over state funds.

(12) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:

(A) the open-enrollment charter under which a charter holder holds the funds or property;

(B) an agreement under which an employee or contractor holds the funds or property;

(C) a law, regulation, or rule that prescribes the manner of acquisition, sale, lease, custody, or disposition of the funds or property, including, but not limited to, violations of Local Government Code, §§171.002-171.007; Local Government Code, Chapter 271, Subchapter B; and TEC, §12.1053 and §12.1054, unless otherwise stated in the charter contract;

(D) a limited purpose for which the funds or property is delivered or received; or

(E) the use authorized by the governing body of the charter holder.

(13) Management services--Services related to the management or operation of a charter school. Management services include any of the following:

(A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;

(B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;

(C) managing a charter school's day-to-day operations as its administrative manager;

(D) preparing a proposed budget or submitting it to the governing body of a charter holder or charter school;

(E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;

(F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy

services in this state, are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;

(G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or

(H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.053 and §39.054, or adopted by the governing body of a charter holder or charter school.

(14) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:

(A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;

(B) a non-profit corporation that is exempt from taxation under 26 United States Code (USC), §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;

(C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

(D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and

(E) a non-profit corporation that is exempt from taxation under 26 USC, §115, is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or TEC, §12.152, and if:

(i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;

(ii) its board of directors must be appointed by such charter holder; and

(iii) its assets become the property of such charter holder upon dissolution.

(15) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:

(A) the applicable contract for charter between the charter holder and the SBOE or commissioner of education;

(B) all applicable state and federal laws, rules, and regulations;

(C) the request for application issued by the TEA to which the charter holder's application for open-enrollment charter responds;

(D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner; and

(E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, commitments,

and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents or orally during its interview with the commissioner or commissioner's designee or orally at a public meeting of the SBOE or any of its committees.

(16) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regardless whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."

(17) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.

(18) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant director of a charter holder or charter school, including one or more of the following functions:

(A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;

(B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;

(C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

(D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;

(E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;

(F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for developing budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);

(G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under TEC, §39.053 and §39.054, or other indicators adopted by the charter holder in its open-enrollment charter; or

(J) organizing the central administration of the charter holder or charter school.

(19) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:

(A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;

(E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or

(F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

(20) Business manager--A person charged with managing the finances of a charter holder or charter school.

(21) Donate--Services are donated if:

(A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;

(B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and

(C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(22) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter and constitutes sufficient grounds for action against the charter holder under §100.1021 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter), §100.1023 of this title (relating to Intervention Based on Charter Violations), §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), and/or §100.1031 of this title (relating to Renewal of an Open-Enrollment Charter).

(23) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds

for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1155 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.

(24) Shared services cooperative--A contractual arrangement among charter holders through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services and/or management services to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:

(A) establish clear procedures for administering services under the direction and control of the cooperative and for assigning responsibility for all costs and liabilities associated with services provided under the contract;

(B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;

(C) establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the cooperative;

(D) if the cooperative may provide special education services, comply with TEC, §29.007; and

(E) be approved in writing by the commissioner before any services are provided.

(25) High-performing entity--An entity that satisfies the criteria under TEC, §12.1011(a)(1), for out-of-state operations or an entity that satisfies the criteria for TEC, §12.1011(a)(2), for in-state operations that meets the performance criteria for the most recent rating years available.

(26) Determination of academic accountability--The process used to determine the applicable year's accountability ratings to measure the academic performance of a charter.

(A) For the purposes of this chapter, the term "academically acceptable" for the following rating years shall mean:

(i) 2004-2011: the category of acceptable performance shall include a rating of Exemplary, Recognized, Academically Acceptable, and alternative education accountability (AEA): Academically Acceptable.

(ii) 2013-2016: the category of acceptable performance shall include a rating of Met Standard and Met Alternative Standard.

(iii) 2017 and beyond: the category of acceptable performance shall include a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual.

(B) For purposes of determination, an academic performance rating during the 2011-2012 school year will not be considered.

(C) For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically

Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

(27) Determination of financial accountability--The process used to determine the applicable year's Financial Integrity Rating System of Texas (FIRST) rating to measure the financial performance of a charter.

(A) For purposes of this chapter, a satisfactory rating shall mean: Superior Achievement, Above Standard Achievement, or Standard Achievement.

(B) For the purposes of this chapter, a lower than satisfactory financial performance rating shall mean a FIRST rating of Substandard Achievement, Suspended: Data Integrity, or as otherwise indicated in the applicable year's financial accountability manual.

§100.1002. Application and Selection Procedures and Criteria.

(a) Prior to each selection cycle, the commissioner of education shall approve an application form for submission by applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

- (1) the timeline for selection;
- (2) required applicant conferences and training prerequisites;
- (3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;
- (4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and
- (5) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section. If the TEA determines that an application is not complete and/or does not meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall remove the application without further processing. The TEA shall establish procedures and schedules for returning applications without further processing. Failure of the TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Applications that are determined to meet the standards established under TEC, §12.101, and §100.1015 of this title shall be reviewed and scored by an external application review panel selected by the commissioner from a pool of qualified candidates identified through a request for qualification (RFQ) process. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except the TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or direc-

tor of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle. The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(f) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:

- (1) personal email addresses;
- (2) proprietary material;
- (3) copyrighted material;
- (4) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and
- (5) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(g) The commissioner or the commissioner's designee(s) in coordination with the TEA staff shall interview applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(h) The commissioner may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

- (1) indications that the charter school will improve student performance;
- (2) innovation evident in the program(s) proposed for the charter school;
- (3) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;
- (4) evidence of parental and community support for or opposition to the proposed charter school;
- (5) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;
- (6) the history of the sponsoring entity of the proposed charter school, as defined in the application form;
- (7) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and
- (8) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:

- (A) representation in urban, suburban, and rural communities;
- (B) instructional settings;
- (C) types of eligible entities;
- (D) types of innovative programs;
- (E) student populations and programs; and
- (F) geographic regions.

(i) In addition to the criteria specified in subsection (h) of this section, the commissioner shall approve or deny an application based on:

- (1) documented evidence gathered through the application review process;
- (2) merit; and
- (3) other criteria, including:
 - (A) criteria related to capability of carrying out the responsibilities as provided in the charter; and
 - (B) the likelihood of operating a high-quality charter, including previous experience operating a public school(s).

(j) Priority shall be given to an applicant that proposes a school in an attendance zone of a school district campus assigned an "academically unacceptable" performance rating under TEC, §39.054, for two preceding years as defined by §100.1001(26) of this title (relating to Definitions).

(k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. State Board of Education (SBOE) members and/or the TEA staff may initiate communications with an applicant. On finding a material violation of the no-contact period, the commissioner shall reject the application and deem it ineligible for award.

(l) The commissioner shall notify the SBOE of each charter the commissioner proposes to grant under this subchapter. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless:

- (1) the SBOE votes against the charter in accordance with TEC, §12.101(b-0); or
- (2) the commissioner withdraws the proposal.

(m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than two months after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met. An applicant that is not granted a charter may reapply.

(n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.

(o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

(p) The charter contract shall be for an initial term of five years beginning on the date the contract is signed by the commissioner following the granting of the initial charter contract.

(q) The charter must open and serve students within one school year of the awarding of the charter contract. The commissioner, in the commissioner's discretion, may grant a single-year extension. Failure to operate within one year, or two years if an extension is granted, constitutes an automatic abandonment of the charter contract and the charter is automatically forfeited.

§100.1003. Application to Dropout Recovery Charters.

A charter granted under Texas Education Code, §12.101(b-7), for a dropout recovery school shall not be considered for the purposes of the limit on the number of charters for open enrollment under the cap. Such charter, however, shall expire at the end of any school year in which the school does not meet the statutory definition of dropout recovery as determined by the Texas Education Agency from the applicable Public Education Information Management System (PEIMS) report. A dropout recovery school shall be defined as a school that:

- (1) serves students in Grades 9-12;
- (2) has an enrollment of which 50% of students are 17 years of age or older as of September 1 of the school year as reported for the fall semester PEIMS submission; and
- (3) meets eligibility requirements for and is registered under alternative education accountability (AEA) procedures.

§100.1004. Application to Public Senior College or University Charters and Public Junior College Charters.

The following provisions apply as indicated in this section to a public senior college or university charter school or a public junior college charter school as though the public senior college or university charter school or the public junior college charter school were granted a charter under Texas Education Code, Chapter 12, Subchapter D.

(1) Section 100.1002(a) of this title (relating to Application and Selection Procedures and Criteria) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1002(c), (h)(1)-(5) and (8), (m), and (o) of this title apply unless provided otherwise in the charter contract.

§100.1007. Annual Report on Open-Enrollment Charter Governance.

(a) No later than December 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents), the following information on a charter school governance reporting form approved by the commissioner of education:

- (1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;

(2) identifying information for and compensation of each officer of the charter school;

(3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school;

(4) identifying information for and compensation of all family members, within the third degree of consanguinity or third degree of affinity, of each board member, chief executive officer/superintendent, and chief financial officer for purposes of conflict of interest; and

(5) identifying information for and compensation of all family members, within the third degree of consanguinity or second degree of affinity, of each board member and chief executive officer/superintendent for purposes of nepotism.

(b) The identifying information required for each member of the governing body of the open-enrollment charter holder, each member of the governing body of the charter school, and each chief executive officer/superintendent shall include:

(1) the title of each position held or function performed by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a mailing address for the individual;

(6) telephone numbers and electronic mail address for the individual;

(7) the county and state in which the individual is registered to vote, if a governing body member of the charter holder or charter school;

(8) assurance that criminal records history check has been made and reported to the Texas Education Agency pursuant to §100.1151 of this title (relating to Criminal History; Restrictions on Serving).

(c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:

(1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;

(2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;

(3) all payment of or reimbursement for personal expenses;

(4) all credit extended to the individual by the charter holder or charter school;

(5) the fair market value of all personal use of property paid for by the charter holder or charter school;

(6) the fair market value of all in-kind transfers of property;

(7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school;

(8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school;

(9) all forms of compensation received from a business in which a person under subsection (a) of this section has a significant interest in, pursuant to Texas Government Code, Chapter 171; and

(10) any payment or form of compensation to an individual under subsection (a) of this section by any and all family members, within the third degree of consanguinity or third degree of affinity.

(d) No later than December 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title:

(1) a copy of any amendments or changes to the articles of incorporation and bylaws, or comparable document; and

(2) a screenshot of the names of the governing body as listed on the home page of the school's internet website, along with a screen shot of the posting of the school's superintendent's salary or, as applicable, the administrator serving as educational leader or chief executive officer.

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

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19 TAC §100.1011

The repeal is adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.1055, which authorizes the commissioner to enforce state law and rules relating to nepotism; TEC, §12.1059, which authorizes the agency to approve certain employees for positions in schools; TEC, §12.110, which authorizes the commissioner to adopt an application form and procedures to be used in applying for an open enrollment charter; TEC, §12.1101, which authorizes

the commissioner to adopt rules for the procedure for providing notice to boards of trustees of a school district and members of the legislature of charter applications that may impact them; TEC, §12.111, which authorizes what a charter must include in order to be granted; TEC, §12.113, which authorizes that a successful charter must satisfy all of TEC, Chapter 12, Subchapter D, and requirements of the application and any required modifications; TEC, §12.114, which authorizes the commissioner to adopt rules for the process to be used to request a revision of a charter of an open-enrollment charter school; TEC, §12.117, which authorizes how the admissions process of an open-enrollment charter school shall occur; TEC, §12.1181, which authorizes the commissioner to develop performance frameworks and adopt rules to implement the performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.119, which authorizes the commissioner to require the annual filing of the charter's articles of incorporation, bylaws, and governance reporting information with the agency; TEC, §12.120, which mandates under which circumstances an individual may or may not serve on a governing body of a charter holder or charter school or serve as an employee; TEC, §12.1202, which authorizes that a majority of the governing body of a charter holder or charter school must be qualified voters; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.1211, which requires an open-enrollment charter school to maintain on the home page of its Internet website the names of its governing body; TEC, §12.123, which authorizes the commissioner to adopt rules necessary for prescribing and implementing the required training for members of the governing bodies of charter schools and officers of charter schools; TEC, §12.126, which authorizes under what circumstances the commissioner may prohibit, deny renewal of or revoke a contract for management services; TEC, §12.129, which requires all teachers and principals employed in an open-enrollment charter school hold a baccalaureate degree; TEC, §12.152, which authorizes the commissioner to grant charters on application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement colleges and university or junior college charter schools; TEC, §12.154, which authorizes the commissioner to establish criteria that must be satisfied for the granting of a charter to a public senior college or university or public junior college; Local Government Code, §140.006, which requires an open-enrollment charter school to post its annual financial statement on the school's Internet website; and Local Government Code, §171.004, which authorizes how all local public officials with a substantial interest in a business entity or real property shall conduct their affairs.

The repeal implements the implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.1055, 12.1059, 12.110, 12.1101, 12.111, 12.113, 12.114, 12.117, 12.1181, 12.119, 12.120, 12.1202, 12.121, 12.1211, 12.123, 12.126, 12.129, 12.152, 12.153, and 12.154 and Local Government Code, §140.006 and §171.004.

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DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1021, 100.1022, 100.1031, 100.1037

The repeals are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.1055, which authorizes the commissioner to enforce state law and rules relating to nepotism; TEC, §12.1059, which authorizes the agency to approve certain employees for positions in schools; TEC, §12.106, which authorizes the commissioner to adopt rules to provide and account for the state funding of charter schools; TEC, §12.1061, which addresses circumstances in which the commissioner may or may not recover certain state funds paid to an open-enrollment charter school; TEC, §12.107, which requires that schools hold in trust for benefit of students all state funds and declares that these funds are considered to be public funds for all purposes under state law; TEC, §12.113, which authorizes that a successful charter must satisfy all of TEC, Chapter 12, Subchapter D, and requirements of the application and any required modifications; TEC, §12.114, which authorizes the commissioner to adopt rules for the process to be used to request a revision of a charter of an open-enrollment charter school; TEC, §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation or modification of governance; TEC, §12.116, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder; TEC, §12.1161, which authorizes how a revoked, nonrenewed, or surrendered charter shall be treated; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §12.1163, which authorizes the commissioner to audit the records of an open-enrollment charter school, charter

holder, and a management company; TEC, §12.1181, which authorizes the commissioner to develop performance frameworks and adopt rules to implement the performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.1202, which authorizes that a majority of the governing body of a charter holder or charter school must be qualified voters; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.1211, which requires an open-enrollment charter school to maintain on the home page of its Internet website the names of its governing body; TEC, §12.123, which authorizes the commissioner to adopt rules necessary for prescribing and implementing the required training for members of the governing bodies of charter schools and officers of charter schools; TEC, §12.126, which authorizes under what circumstances the commissioner may prohibit, deny renewal of or revoke a contract for management services; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; and TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools.

The repeals implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1054, 12.1055, 12.1059, 12.106, 12.1061, 12.107, 12.113, 12.114, 12.1141, 12.115, 12.116, 12.1161, 12.1162, 12.1163, 12.1181, 12.1202, 12.121, 12.1211, 12.123, 12.126, 39.102, 39.103, and 39.104.

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19 TAC §§100.1021 - 100.1023, 100.1025, 100.1026, 100.1031 - 100.1033, 100.1035

The new sections and amendments are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which re-

quires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.1055, which authorizes the commissioner to enforce state law and rules relating to nepotism; TEC, §12.1059, which authorizes the agency to approve certain employees for positions in schools; TEC, §12.106, which authorizes the commissioner to adopt rules to provide and account for the state funding of charter schools; TEC, §12.1061, which addresses circumstances in which the commissioner may or may not recover certain state funds paid to an open-enrollment charter school; TEC, §12.107, which requires that schools hold in trust for benefit of students all state funds and declares that these funds are considered to be public funds for all purposes under state law; TEC, §12.113, which authorizes that a successful charter must satisfy all of TEC, Chapter 12, Subchapter D, and requirements of the application and any required modifications; TEC, §12.114, which authorizes the commissioner to adopt rules for the process to be used to request a revision of a charter of an open-enrollment charter school; TEC, §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation or modification of governance; TEC, §12.116, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder; TEC, §12.1161, which authorizes how a revoked, nonrenewed, or surrendered charter shall be treated; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §12.1163, which authorizes the commissioner to audit the records of an open-enrollment charter school, charter holder, and a management company; TEC, §12.1181, which authorizes the commissioner to develop performance frameworks and adopt rules to implement the performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.1202, which authorizes that a majority of the governing body of a charter holder or charter school must be qualified voters; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.1211, which requires an open-enrollment charter school to maintain on the home page of its Internet website the names of its governing body; TEC, §12.123, which authorizes the commissioner to adopt rules necessary for prescribing and implementing the required training for members of the governing bodies of charter schools and officers of charter schools; TEC, §12.126, which authorizes under what circumstances the commissioner may prohibit, deny renewal of or revoke a contract for management services; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; and TEC, §39.104, which authorizes the commissioner to adopt

rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools.

The new sections and amendments implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1054, 12.1055, 12.1059, 12.106, 12.1061, 12.107, 12.113, 12.114, 12.1141, 12.115, 12.116, 12.1161, 12.1162, 12.1163, 12.1181, 12.1202, 12.121, 12.1211, 12.123, 12.126, 39.102, 39.103, and 39.104.

§100.1021. Revocation and Modification of Governance of an Open-Enrollment Charter.

(a) Mandatory revocation or reconstitution. Except as provided by subsection (b) of this section, the commissioner of education shall either revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder:

- (1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
- (2) failed to satisfy generally accepted accounting standards of fiscal management;
- (3) failed to protect the health, safety, or welfare of the students enrolled at the school;
- (4) failed to comply with Texas Education Code, Chapter 12, Subchapter D, or another applicable law or rule;
- (5) failed to satisfy the performance framework standards as set forth in the Charter School Performance Framework Manual established under Texas Education Code (TEC), §12.1181; or
- (6) is imminently insolvent as determined by the commissioner in accordance with §100.1022(h) of this title (relating to Standards to Revoke and Modify the Governance of an Open-Enrollment Charter).

(b) Mandatory revocation.

(1) Use of criteria. Notwithstanding §100.1022 of this title, the commissioner shall revoke the charter of an open-enrollment charter school if for the three preceding school years:

- (A) the charter holder has been assigned an "academically unacceptable" performance rating under TEC, Chapter 39, Subchapter C;
- (B) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance lower than satisfactory; or
- (C) the charter holder has been assigned any combination of an academic performance rating of "academically unacceptable" under TEC, Chapter 39, Subchapter C, and/or a financial performance rating lower than satisfactory under TEC, Chapter 39, Subchapter D.

(2) Use of determinations and data. The following provisions apply to a mandatory revocation under this section.

(A) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued.

(B) For purposes of revocation under paragraph (1)(A) of this subsection, the term "unacceptable performance" means an academic accountability rating that is unacceptable as defined in §100.1001(26) of this title (relating to Definitions).

(C) For purposes of revocation under paragraph (1)(B) of this subsection, the term "financial performance lower than satisfac-

tory" means a financial accountability rating that is lower than satisfactory as defined in §100.1001(27) of this title.

(D) For purposes of revocation under paragraph (1)(A) of this subsection, the initial three school years for which performance ratings under TEC, Chapter 39, Subchapter C, shall be considered are the 2009-2010, 2010-2011, and 2012-2013 school years.

(E) For purposes of revocation under paragraph (1)(B) of this subsection, the initial three school years for which financial accountability performance ratings under TEC, Chapter 39, Subchapter D, shall be considered are the 2010-2011, 2011-2012, and 2012-2013 school years.

(F) The provisions in subparagraphs (D) and (E) of this paragraph and this subparagraph expire on September 1, 2016.

(c) Notice and content of decision to revoke or modify. The commissioner shall provide written notice to the charter holder of the commissioner's decision to revoke or modify the governance of a charter. The notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.

(d) State Office of Administrative Hearing (SOAH) review of revocation. A decision by the commissioner to revoke the charter of an open-enrollment charter school under TEC, §12.115, is subject to review by the SOAH under an arbitrary and capricious or clearly erroneous standard as described by Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).

(e) Reconstitution of governing body of charter holder and/or creation of a new 501(c)(3) organization. With the exception of revocation actions taken under subsection (b) of this section, the commissioner may choose to reconstitute the governing board of a charter holder and/or require the creation of a new 501(c)(3) organization if it is determined that the charter holder committed any violation under subsection (a) of this section.

(1) To reconstitute the board, the commissioner shall appoint members to the governing body and shall consider local input from community members and parents as well as appropriate credentials and expertise for membership, including financial expertise, residency, and educational background. The commissioner may reappoint current members of the governing body.

(2) The commissioner may also require the charter holder board to create a new single purpose organization that is exempt from taxation under 501(c)(3), Internal Revenue Code of 1986, if the governing body of a charter holder subject to reconstitution governs enterprises other than the open-enrollment charter school. The commissioner shall appoint the members of the governing body of the newly created organization.

(3) The commissioner may require the charter holder to surrender the charter to the commissioner for transfer to the newly created organization.

(4) A decision by the commissioner to reconstitute the governing body of the charter of an open-enrollment charter school or to create a new 501(c)(3) organization under Internal Revenue Code of 1986 under TEC, §12.115, is subject to a formal review as described by Chapter 157, Subchapter EE, Division 2, of this title (relating to Formal Review).

§100.1026. Management of Charter Campus(es) Following Revocation, Surrender, or Expiration.

Upon revocation, surrender, or expiration of a charter, the commissioner of education or the commissioner's designee may:

(1) assign one or more campuses to a consenting charter holder that meets the minimum qualifications for a campus expansion amendment approval as designated in §100.1033(b)(1)-(9) of this title (relating to Charter Amendment); or

(2) provide for the management of the day-to-day operations of the campus(es) until alternative arrangements have been made.

§100.1031. Renewal of an Open-Enrollment Charter.

(a) Petition for renewal.

(1) A charter holder of an open-enrollment charter may submit, as described by this section, a petition for:

(A) expedited renewal; or

(B) discretionary renewal.

(2) A petition for renewal of the charter must be submitted on the date provided by the Texas Education Agency (TEA) annually, prior to the expiration of the charter contract.

(3) A petition for renewal must be in the form provided by the TEA and shall include all information and documentation required by the form.

(4) If a charter holder fails to submit a timely and sufficient petition for renewal of an open-enrollment charter, the existing charter may expire at the end of its term.

(b) Expedited renewal. If a charter holder submits the petition for expedited renewal, the commissioner of education will approve or deny the expedited renewal not later than the 30th day after the date of the charter holder submission. A charter holder may submit a petition for expedited renewal if:

(1) the charter holder has been assigned the highest or second highest performance rating under Texas Education Code (TEC), Chapter 39, Subchapter C, for the three preceding school years;

(2) the charter holder has been assigned a financial performance accountability rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is satisfactory or better for the three preceding school years; and

(3) no campus operating under the charter has been assigned the lowest performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years or such a campus has been closed.

(c) Expiration. Notwithstanding any other law, a determination by the commissioner under this subsection is final and may not be appealed. The commissioner may not renew the charter and must allow the charter to expire if:

(1) the charter holder has been assigned the lowest performance rating under TEC, Chapter 39, Subchapter C, for any three of the five preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;

(3) the charter holder has been assigned any combination of the ratings described by paragraph (1) or (2) of this subsection for any three of the five preceding school years; or

(4) any campus operating under the charter has been assigned the lowest performance rating under TEC, Chapter 39, Subchap-

ter C, for the three preceding school years and such a campus, and if applicable, all sites associated with the campus, has not been closed.

(d) Discretionary renewal.

(1) A charter holder may submit a petition for discretionary renewal if it:

(A) does not qualify to submit the petition for expedited renewal; or

(B) is not subject to an expiration under subsection (c) of this section.

(2) In evaluating the petition for discretionary renewal, the commissioner shall consider the following:

(A) the results of the charter's annual evaluation under the performance framework set forth in the Charter School Performance Framework Manual established under TEC, §12.1181; and

(B) the criteria described under §100.1032 of this title (relating to Standards for Discretionary Renewal).

(e) Special rules for alternative education accountability (AEA) charters. The following provisions apply to the renewal of the charter of an open-enrollment charter school that is registered under the TEA AEA procedures for evaluation under TEC, Chapter 39.

(1) Discretionary renewal of AEA charters. An AEA charter may submit the petition for discretionary renewal and the petition must be considered under the discretionary renewal process. An AEA charter may not submit a petition for expedited renewal.

(2) Academic criteria for discretionary renewal of AEA charters.

(A) In considering a petition for discretionary renewal by an AEA charter such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria as outlined in the Charter School Performance Framework Manual established under TEC, §12.1181, that is appropriate to measure the specific goals of the school.

(B) For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school:

(i) that serves students in Grades 9-12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and

(ii) that meets the eligibility requirements for and is registered under AEA procedures adopted by the commissioner.

(3) Expiration of AEA charters. The commissioner may not renew and must allow an AEA charter to expire if the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years.

(f) Notice and content of renewal decision or determination.

(1) Expedited renewal decision. Not later than the 30th day after the submission of a petition for expedited renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the expedited renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors

considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.

(2) Discretionary renewal decision. Not later than the 90th day after the submission of a petition for discretionary renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the discretionary renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the determination.

(3) Expiration determination. The commissioner shall provide written notice to the charter holder of the commissioner's determination that the charter must expire. In the event a charter holder that meets the criteria for expiration submits a petition for renewal, the commissioner, not later than the 90th day after the submission, shall provide written notice to the charter holder of the commissioner's decision to deny the petition. Determinations made by the commissioner are final and may not be appealed. The notice shall include an explanation of the factual and legal basis for the determination, a description of the legally relevant factors considered, and an explanation of why the result reached is reasonable.

(4) Delivery and effective date of notice. The commissioner shall provide written notice to the charter holder by regular mail. Notice is effective as of the date of the postmark.

(g) Appeal of renewal decisions and determinations. A decision by the commissioner to deny the petition for an expedited renewal or the petition for a discretionary renewal is subject to review by the State Office of Administrative Hearings under an arbitrary and capricious or clearly erroneous standard as described under Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).

(h) Use of ratings and data. The following provisions apply to the petition for renewal or expiration under this section.

(1) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued, and the term "three of the five preceding school years" means three out of the most recent five school years during which a rating was issued.

(2) A rating that does not meet the criteria for "academically acceptable" as defined by §100.1001(26) of this title (relating to Definitions) shall not be considered the highest or second highest academic performance rating for purposes of this section.

(3) For purposes of renewal or expiration under this section, the term "unacceptable performance" means an unacceptable academic performance rating as defined by §100.1001(26) of this title.

(4) For purposes of renewal under this section, the term "financial performance lower than satisfactory" means a financial performance rating as defined by §100.1001(27) of this title.

(5) For purposes of determination of renewal or expiration, the academic accountability performance rating for the 2011-2012 school year may not be considered.

(6) For purposes of determination of renewal or expiration, the earliest three school years for which performance ratings under TEC, Chapter 39, Subchapter C, shall be considered are the 2009-2010, 2010-2011, and 2012-2013 school years.

(7) For purposes of determination of renewal, the earliest school year for which financial accountability performance ratings under TEC, Chapter 39, Subchapter D, may be considered is the 2010-2011 school year.

(8) The provisions in paragraphs (5)-(7) of this subsection and this paragraph expire on September 1, 2016.

(i) Conflict of rule. Except as provided by subsection (c) of this section, a contract term that conflicts with any rule in Part 2 of this title is superseded by the rule to the extent that the rule conflicts with the contract term.

(j) Conditional approval. Notwithstanding any other rule in Part 2 of this title, the commissioner may require, as a condition of renewal, that the charter holder amend a contract under TEC, §12.114(a), to correct any ambiguities, defects, or other infirmities.

§100.1032. Standards for Discretionary Renewal.

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following:

(1) Academic:

(A) assignment of an "academically unacceptable" rating as defined in §100.1001(26) of this title (relating to Definitions);

(B) failure to meet academic performance standards for students not measured in the accountability system;

(C) academic performance of subpopulations; and

(D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education;

(2) Financial:

(A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);

(B) failure to hold state funds in trust for the benefit of the students of the charter school;

(C) failure to satisfy generally acceptable accounting standards of fiscal management;

(D) failure to resolve a lien, levy, or other garnishment within 30 days;

(E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;

(F) failure to timely file annual financial report required under TEC, §44.008;

(G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);

(H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(27) of this title;

(I) submission of attendance accounting data resulting in an overallocation from the FSP;

(J) existence of the following interested transactions:

(i) failure to comply with Local Government Code, Chapter 171;

(ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and

(iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;

(K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;

(L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;

(M) renting or purchasing property for amounts in excess of fair market value;

(N) loss of eligibility to participate in the child nutrition program for more than 30 days;

(O) charter holder being imminently insolvent as defined by this chapter;

(P) failure to conduct fiscal mismanagement, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and

(Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable; and

(3) Operational:

(A) Governance:

(i) failure to timely file accurate and complete governance reporting forms;

(ii) non-compliance with required charter board training;

(iii) failure to timely and accurately report board training in the annual financial report;

(iv) failure to maintain verification of criminal history check/fingerprinting;

(v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Family Code, Open Meetings and Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;

(vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapter 12 and Chapter 22;

(vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Family Code, Chapter 261;

(viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency

(TEA) in the applicable minutes of the charter holder's corporate records;

(ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and

(x) failure to maintain the 501(c)(3) status of the charter holder at all times;

(B) Complaints: failure to timely respond to and correct any complaints as directed by the TEA;

(C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):

(i) operation of any sites that do not meet the definition of a site according to §100.1001(3)(D) of this title and that do not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;

(ii) failure to operate a campus at which at least 50 percent of students are in tested grades;

(iii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;

(iv) failure to document and fully disclose any step transactions in the purchase or sale of property; and

(v) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;

(D) Activity fees and volunteer requirements:

(i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and

(ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;

(E) Management contracts:

(i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;

(ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);

(iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with the TEA;

(iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:

(I) financial accounting;

(II) record retention;

(III) health, safety, and welfare of students;

(IV) educational program accountability;

(V) Texas Open Meetings Act;

(VI) Texas Public Information Act; and

(VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and

(v) failure to comply with requirements in §100.1153 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and

(F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181.

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

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DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §§100.1041, 100.1043, 100.1045, 100.1047, 100.1050 - 100.1052

The amendments and new sections are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.106, which authorizes the commissioner to adopt rules to provide and account for the state funding of charter schools; TEC, §12.1061, which addresses circumstances in which the commissioner may or may not recover certain state funds paid to an open-enrollment charter school; TEC, §12.107, which requires that schools hold in trust for benefit of students

all state funds and declares that these funds are considered to be public funds for all purposes under state law; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §12.1163, which authorizes the commissioner to audit the records of an open-enrollment charter school, charter holder, and a management company; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.128, which authorizes the commissioner to adopt rules necessary to insure that all property purchased or leased with state funds considered to be public property for all purposes under state law held in trust for the benefit of students of the open-enrollment school is returned to the state when the open-enrollment charter school ceases to operate; TEC, §12.136, which requires an open-enrollment charter school to post on the school's Internet website the salary of the superintendent or the administrator serving as the educational leader and chief executive officer; Local Government Code, §140.006, which requires an open-enrollment charter school to post its annual financial statement on the school's Internet website; and Local Government Code, §171.004, which authorizes how all local public officials with a substantial interest in a business entity or real property shall conduct their affairs.

The amendments and new sections implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.106, 12.1061, 12.107, 12.1162, 12.1163, 12.121, 12.128, and 12.136 and Local Government Code, §140.006 and §171.004.

§100.1041. State Funding.

(a) Funding formula elements. A charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to Texas Education Code (TEC), Chapter 42.

(1) Tier I program allocations are determined by substituting the statewide average adjusted allotment in place of the district's calculated adjusted allotment. The state average adjusted allotment takes into account the cost of education index and the small, mid-size, and sparsity adjustments specified in TEC, §§42.102, 42.103, 42.104, and 42.105. The state average adjusted allotment is computed by averaging the adjusted allotment for each independent school district (ISD) in the state for the relevant school year.

(2) An allocation for the guaranteed yield allotment for Tier II of the FSP is determined by substituting a statewide average enrichment tax rate in place of the district's calculated enrichment tax rate (DTR) pursuant to TEC, §42.302. The state average tax rate is computed by averaging the DTR for each component of Tier II for each ISD in the state for the relevant school year.

(b) Implementation schedule. The formula elements described in subsection (a) section will take effect for charter schools that begin operation in the 2001-2002 school year or later. Charter schools that report attendance that occurs prior to September 2, 2001, are considered to be in operation on September 1, 2001, and will be funded as described in House Bill 6, Section 40(b), 77th Texas Legislature, 2001. Charter schools that report no attendance that occurs prior to September 2, 2001, are considered to begin operation in the 2001-2002 school year or later, and will be funded according to subsection (a) of this section and TEC, §12.106.

(c) Tuition and fees. A charter school shall not charge tuition and shall not charge a fee except:

(1) a charter school may charge a fee listed in TEC, §11.158(a);

(2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532; and

(3) a charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).

(d) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the chair and the commissioner of education.

(1) If a charter holder, before or without approval of an amendment under §100.1033 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, expands its geographic boundaries, or exceeds its maximum allowable enrollment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.

(2) A former charter holder is not eligible to receive state funds.

(e) Return of overallocated funds.

(1) Within 30 days of receiving notice of an overallocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are overallocated within the meaning of this subsection.

(2) If the charter holder fails to make the requested refund, the TEA may recover the overallocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.

(3) Notwithstanding paragraph (2) of this subsection, the TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:

(A) the basis of the garnishment or recovery is that:

(i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and

(ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and

(B) the school:

(i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school; and

(iii) used all funds received under TEC, §12.106, to provide education services to students.

(4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

§100.1050. *Disclosure of Financial Information.*

The governing board of an open-enrollment charter school shall continuously post on the school's internet website the following information:

(1) the salary of the school's superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer; and

(2) the school's annual financial statement.

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

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DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1063, 100.1067, 100.1071, 100.1073

The amendments are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.106, which authorizes the commissioner to adopt rules to provide and account for the state funding of charter schools; TEC, §12.1061, which addresses circumstances in which the commissioner may or may not recover certain state funds paid to an open-enrollment charter school; TEC, §12.107, which requires that schools hold in trust for benefit of students all state funds and declares that these funds are considered to be public funds for all purposes under state law; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management,

operation, and accountability of the school; and TEC, §12.128, which authorizes the commissioner to adopt rules necessary to insure that all property purchased or leased with state funds considered to be public property for all purposes under state law held in trust for the benefit of students of the open-enrollment school is returned to the state when the open-enrollment charter school ceases to operate.

The amendments implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.106, 12.1061, 12.107, 12.1162, 12.121, and 12.128.

§100.1063. Use of Public Property by a Charter Holder.

(a) Public property. An interest in real estate or personal property acquired, improved, or maintained using state funds that were received by the charter holder on or after September 1, 2001, is public property for all purposes under state law. The date on which the property was acquired, improved, or maintained is not determinative. An interest in real estate acquired, improved, or maintained using state funds that were received by the charter holder before September 1, 2001, is public property only to the extent specified by §100.1065 of this title (relating to Property Acquired with State Funds Received Before September 1, 2001--Special Rules). Where the property is acquired with federal funds, federal law may preempt this section in whole or part.

(b) Fiduciary duty respecting public property. Public property is held by the charter holder in trust for the benefit of the students of the charter school. With respect to the public property they manage, the members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, are trustees under Texas law; and the students enrolled in the school are beneficiaries of a trust. Each trustee shall be held to the standard of care and fiduciary duties that a trustee owes the beneficiary of a trust under Texas law.

(c) Use of public property. Public property may be used only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with Texas Education Code (TEC), §12.107.

(1) Any use or application of public property for a purpose other than implementing a program that is described in the open-enrollment charter and is consistent with TEC, §12.107, constitutes misuse and misapplication of such property, and is subject to Texas law governing misuse or misapplication of public property.

(2) The governing body of a charter holder shall adopt and enforce local policies governing the use and application of public property by its employees, agents, contractors, and management companies. The policies shall prohibit the use or application of public property for any purpose but a program described in the open-enrollment charter, except that the policies may authorize charter holder employees to use local telephone service, cellular phones, electronic mail, Internet connections, and similar public property for incidental personal use, if the policies:

(A) do not result in any direct cost paid with state funds, or the charter holder is reimbursed for any direct cost incurred;

(B) do not impede charter school functions;

(C) do not authorize incidental personal use of public property for private commercial purposes; and

(D) authorize only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--for personal matters.

(3) The governing body of a charter holder shall by separate vote approve any joint use of real property for charter and non-charter activities. In the minutes of the vote approving the joint use, the governing body of a charter holder shall set forth the methodology used to allocate shared costs and the percentage allocation basis between charter and non-charter activities.

(4) The members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, shall authorize all uses and applications of the public property under their control, and shall not authorize any use or application that is inconsistent with the policy required by paragraph (2) of this subsection.

(5) If pursuant to TEC, §12.111(9), the daily management of public property is delegated to any person, including a management company, the members of the governing body of the charter holder, and the members of the governing body and officers of the charter school, shall remain fully responsible to authorize all uses and applications of public property and enforce the policy required by paragraph (2) of this subsection.

(6) Nothing in this section prevents a charter holder from authorizing the use of its public property by a contractor for the purpose of providing goods or services under the contract, if such use is an express contract term, factored into the price of the contract, and the contract is duly authorized by the governing body of the charter holder under this section.

(d) Ownership of public property. Public property is owned by the charter holder, regardless of the funds used to acquire it. Subject to the requirements of §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) and this section, a charter holder retains all title to the property, exercises complete control over the property, and is entitled to all use and benefit from the property.

(e) Public property mixed with private property. Property acquired, improved, or maintained partly using state funds and partly using other funds is mixed public and private property, and is subject to all requirements of this section.

(f) Accounting for public property. Each charter holder shall include in its annual audit report an exhibit identifying the fixed assets of the charter holder and the ownership interest of all parties for all real estate and capitalized personal property presently held by the charter holder or acquired, improved, or maintained by the charter holder during the term of the open-enrollment charter.

(1) Pursuant to the requirements in §109.41 of this title (relating to Financial Accountability System Resource Guide), the annual audit report must separately disclose the cost basis and accumulated depreciation of all public property as determined by this division, and all other property held, acquired, improved, or maintained by the charter holder.

(2) Alternatively, the charter holder may omit the exhibit required by paragraph (1) of this subsection and substitute a statement, in accordance with the requirements in §109.41 of this title, that all property acquired, improved, or maintained during the term of the open-enrollment charter, and all property presently held by the charter holder, is public property under this division.

(3) All property held, acquired, improved, or maintained by the charter holder is subject to this subsection regardless whether it is public or private property.

§100.1067. Possession and Control of the Public Property of a Former Charter Holder.

(a) Disposition of audited property. If the exhibits to the annual audit reports filed by a former charter holder are in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by those exhibits as provided by subsection (c) of this section.

(b) Disposition of property--defective audit. If the exhibits to the annual audit reports filed by a former charter holder are not in substantial compliance with §100.1063(f) of this title, the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law.

(1) At any time prior to taking possession and assuming control of the affected property, the commissioner may determine whether the exhibits to the annual audit reports filed by a former charter holder substantially comply with §100.1063(f) of this title.

(2) At the commissioner's sole discretion, the commissioner may cure any defects in the filed exhibits by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.

(3) If successful in curing all defects in such exhibits, the commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by those exhibits as provided by subsection (c) of this section.

(c) Method for audited property. In taking possession, assuming control, and supervising the disposition of property that has been properly recorded by a former charter holder under §100.1063(f) of this title, the commissioner:

(1) shall accept and rely on the cost basis disclosure of all public property and all other property acquired by the former charter holder disclosed by the annual audit reports already on file with the agency and, if needed, by the annual audit report for the fiscal year in which the charter holder ceased operations;

(2) shall take possession and assume control over all public property disclosed by the annual audit reports;

(3) shall permit the former charter holder to designate the property to be used by the commissioner to satisfy the amount required by paragraph (2) of this subsection, and defer to the reasonable wishes of the former charter holder in this respect;

(4) may liquidate property designated by the former charter holder and, if the commissioner determines it to be necessary, liquidate other property; and

(5) shall return to the possession and control of the former charter holder any property in excess of the ownership interest of the State of Texas and/or federal grant or funding agencies of all public property disclosed by the annual audit reports, in accordance with current fair market valuation of the property.

(d) Use of legal process. Notwithstanding subsection (c) of this section, the commissioner may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.

§100.1071. *Real Property Held in Trust.*

(a) This section applies to a charter holder unless alternative procedures for purchasing and selling real property held in trust have been approved by the commissioner of education under §100.1006 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.

(b) A requirement in Government Code, Chapter 2252, Subchapter D, that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(1) A charter holder may not purchase real property held in trust until the trustee submits to the governing body of the charter holder a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to the charter holder.

(2) A charter holder may not sell real property to a trustee until the charter holder receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property. The trustee shall identify the person who will be the true owner of the property to the charter holder.

(3) A conveyance of property subject to this section is void if a charter holder fails to comply with this section.

(4) A trust agreement submitted to the governing body of the charter holder is confidential information excepted from the requirements of Government Code, §552.021, but must be disclosed to the Texas Education Agency under §100.1029 (relating to Agency Audits, Monitoring, and Investigations).

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

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Director, Rulemaking

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DIVISION 5. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1102 - 100.1105, 100.1111, 100.1112, 100.1131, 100.1133, 100.1151, 100.1155

The amendments are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which

authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.1054, which authorizes the commissioner to enforce state law and rules relating to conflict of interest; TEC, §12.1055, which authorizes the commissioner to enforce state law and rules relating to nepotism; TEC, §12.1059, which authorizes the agency to approve certain employees for positions in schools; TEC, §12.106, which authorizes the commissioner to adopt rules to provide and account for the state funding of charter schools; TEC, §12.107, which requires that schools hold in trust for benefit of students all state funds and declares that these funds are considered to be public funds for all purposes under state law; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §12.1163, which authorizes the commissioner to audit the records of an open-enrollment charter school, charter holder, and a management company; TEC, §12.120, which mandates under which circumstances an individual may or may not serve on a governing body of a charter holder or charter school or serve as an employee; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.123, which authorizes the commissioner to adopt rules necessary for prescribing and implementing the required training for members of the governing bodies of charter schools and officers of charter schools; TEC, §12.126, which authorizes under what circumstances the commissioner may prohibit, deny renewal of or revoke a contract for management services; TEC, §12.128, which authorizes the commissioner to adopt rules necessary to insure that all property purchased or leased with state funds considered to be public property for all purposes under state law held in trust for the benefit of students of the open-enrollment school is returned to the state when the open-enrollment charter school ceases to operate; and Local Government Code, §171.004, which authorizes how all local public officials with a substantial interest in a business entity or real property shall conduct their affairs.

The amendments implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.1055, 12.1059, 12.106, 12.107, 12.1162, 12.1163, 12.120, 12.121, 12.123, 12.126, and 12.128 and Local Government Code, §171.004.

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DIVISION 6. CHARTER SCHOOL OPERATIONS

19 TAC §§100.1205, 100.1207, 100.1211, 100.1213, 100.1215, 100.1217

The amendments are adopted under the Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school, including the adoption of rules to modify criteria for granting a charter to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.1011, which authorizes the commissioner to adopt rules to modify criteria for granting charters for high-performing entities to the extent necessary to address changes in performance rating categories or in the financial accountability system under TEC, Chapter 39; TEC, §12.102, which requires schools to operate and govern in accordance with its charter; TEC, §12.103, which authorizes that schools are subject to federal and state laws and rules adopted as applicable to charters; TEC, §12.104, which authorizes the commissioner to adopt rules relating to the applicability of public education law to charter schools; TEC, §12.1053, which authorizes the commissioner to approve procedures for contracting and purchasing or subject schools to rules of governmental entity; TEC, §12.117, which authorizes how the admissions process of an open-enrollment charter school shall occur; TEC, §12.120, which mandates under which circumstances an individual may or may not serve on a governing body of a charter holder or charter school or serve as an employee; TEC, §12.121, which requires the governing body of a charter holder to be responsible for and to retain control of the management, operation, and accountability of the school; TEC, §12.128, which authorizes the commissioner to adopt rules necessary to insure that all property purchased or leased with state funds considered to be public property for all purposes under state law held in trust for the benefit of students of the open-enrollment school is returned to the state when the open-enrollment charter school ceases to operate; and Local Government Code, §171.004, which authorizes how all local public officials with a substantial interest in a business entity or real property shall conduct their affairs.

The amendments implement the TEC, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.117, 12.120, 12.121, and 12.128 and Local Government Code, §171.004.

§100.1207. Student Admission.

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit an application not later than a reasonable deadline the charter holder establishes; and

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (c) of this section, fill the available positions in the order in which all timely applications were received.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (a) of this section to the extent this is consistent with the definition of a "public charter school"

under the No Child Left Behind Act of 2001, P.L. 107-110, §5210 (NCLB), as interpreted by the United States Department of Education (USDE).

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(2)(B) of this section only if it published a notice of the opportunity to apply for admission to the charter school. A notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline. For purposes of this chapter, a newspaper of general circulation is defined as one that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.

(d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law; and

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy.

(e) Student admission and enrollment at charter schools specializing in performing arts. In accordance with the TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.

(1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:

(A) a core academic curriculum that is integrated with performing arts instruction;

(B) a wider array of performing arts courses than are typically offered at public schools;

(C) frequent opportunities for students to demonstrate their artistic talents;

(D) cooperative programs with other organizations or individuals in the performing arts community; or

(E) other innovative methods for offering performing arts learning opportunities.

(2) To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts may adopt an admission policy that re-

quires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

(3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.

(4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.

(f) Maximum enrollment. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. A charter school may establish a primary and secondary boundary. Students who reside outside the primary geographic boundary stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants that reside within the primary boundary and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides for a secondary boundary, the charter holder may admit students who reside within the secondary boundary to the charter school in accordance with the terms of the open-enrollment charter.

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CHAPTER 157. HEARINGS AND APPEALS SUBCHAPTER EE. INFORMAL REVIEW, FORMAL REVIEW, AND REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS

The Texas Education Agency (TEA) adopts new §§157.1121-157.1123, 157.1131-157.1137, 157.1151, 157.1153, 157.1181-157.1189, and 157.1191; amendments to §§157.1155, 157.1157, 157.1165, 157.1167, 157.1169, and 157.1173; and the repeal of §§157.1151, 157.1153, 157.1159, 157.1161, and 157.1163, concerning hearings and appeals. New §§157.1121, 157.1183, 157.1184, and 157.1186 and amendments to §§157.1155, 157.1157, and 157.1167 are adopted with changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5538). New §§157.1122, 157.1123, 157.1131-157.1137, 157.1151, 157.1153, 157.1181, 157.1182, 157.1185, 157.1187-157.1189, and 157.1191; amendments to §§157.1165, 157.1169, and 157.1173; and the repeal of §§157.1151, 157.1153, 157.1159, 157.1161, and

157.1163 are adopted without changes to the proposed text as published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5538) and will not be republished.

The sections establish provisions relating to the review of certain accreditation sanctions by the State Office of Administrative Hearings (SOAH). The adopted actions modify these rules to increase the efficiency of the processes and to reflect changes in law made by Senate Bill (SB) 2, 83rd Texas Legislature, Regular Session, 2013. The adopted rule actions also transfer and consolidate certain review processes currently found under 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, and modify these rules to increase the efficiency of the processes and to reflect changes in law made by SB 2, 83rd Texas Legislature, Regular Session, 2013.

The rules in 19 TAC Chapter 157, Subchapter EE, adopted effective January 6, 2008, and last amended effective December 22, 2010, implement requirements that an opportunity for challenging the record review of accreditation sanctions be available in specified circumstances and provided by the SOAH.

The 83rd Texas Legislature, Regular Session, 2013, passed SB 2, effective September 1, 2013. SB 2 made several significant changes to the regulation of charter schools. The adopted revisions to 19 TAC Chapter 157, Subchapter EE, clarify the procedures to be used when taking action set forth in SB 2.

In addition, the adopted revisions modify the processes found under the current rules to increase efficiency and effectiveness. The adopted revisions also transfer and consolidate certain review processes currently found under 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews. The provisions transferred from 19 TAC Chapter 97, Subchapter DD, to 19 TAC Chapter 157, Subchapter EE, are modified to increase the efficiency of the processes and to reflect changes in law made by SB 2.

The adopted revisions to 19 TAC Chapter 157, Subchapter EE, organize the rules into separate divisions relating to informal review, formal review, SOAH substantial evidence review, SOAH arbitrary and capricious or clearly erroneous review, and conflicts. In addition, the subchapter title is revised to read, "Informal Review, Formal Review, and Review by State Office of Administrative Hearings."

In response to public comment, the following changes are made at adoption.

Section 157.1155, Petition for Review, was revised in subsection (b) to clarify that the TEA would dismiss a petition for review without referral to SOAH.

Section 157.1167, Expedited Review, was revised by clarifying language in subsection (b) and adding new subsection (g) to provide SOAH with additional guidance relating to setting deadlines and issuing orders.

Section 157.1183, Petition for Review, was revised in subsection (b) to clarify that the TEA would dismiss a petition for review without referral to SOAH.

Section 157.1186, Expedited Review, was revised by clarifying language in subsections (b) and (e) and adding new subsection (g) to provide SOAH with additional guidance relating to setting deadlines and issuing orders.

In addition, references to *de novo* were removed from the Division 3 title and §§157.1121, 157.1157, and 157.1184 to clarify that SOAH is to conduct a review of a commissioner decision in compliance with respective statutes.

The adopted rule actions have no procedural or reporting implications.

The adopted rule actions have no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 18, 2014, and ended August 18, 2014, and included a public hearing that was held on Friday, July 25, 2014. Following is a summary of the public comments received, including those received at the public hearing, and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions.

Comments: Texas Serenity Charter School and several individuals stated that the proposed rules fail to give charter holders due process.

Jubilee Academic Center in San Antonio stated that the proposed rules fail to give charter holders due process, which will result in taking private property, limiting facilities acquisition, limiting financing opportunities, and increasing the cost of borrowing.

The Texas League of Community Charter Schools stated that the proposed rules fail to give charter holders due process, which results in destabilization, impairs access to credit, and increases the cost of borrowing.

The Texas Charter Schools Association stated that the proposed rules fail to give a charter holder a meaningful opportunity to be heard and present its side of the story, to be present at the informal review, to present evidence, and to have its arguments and evidence reflected in a final decision. The Texas Charter Schools Association also stated that the proposed rules fail to give charter holders an opportunity to show compliance and mitigating factors.

Agency Response: The agency disagrees and determined that the rules provide charter holders with the statutory due process required by the Texas Education Code (TEC), Chapters 12 and 39.

Comment: American YouthWorks stated that the proposed rules fail to give charter holders due process and constitute a retroactive application of law.

Agency Response: The agency disagrees and determined that the rules provide charter holders with the statutory due process required by the TEC, Chapters 12 and 39. The agency further determined that the proposed rules do not constitute a retroactive application of law.

Comment: Several individuals stated that the proposed rules are impermissibly retroactive.

Agency Response: The agency disagrees and determined that the rules are not impermissibly retroactive, but properly implement and provide charter holders with the statutory due process required by the TEC, Chapters 12 and 39.

Comment: Several individuals stated that the proposed rules are arbitrary, create uncertainty, and fail to properly implement the changes set forth in SB 2, 83rd Texas Legislature, Regular Session, 2013.

Agency Response: The agency partially disagrees and determined that in general, the rules properly implement the changes set forth in SB 2. However, the agency has made appropriate changes in response to other comments to eliminate any confusion or lack of clarity and to ensure the proposed rules more precisely reflect the language and intent of SB 2. References to *de novo* were removed to clarify that the SOAH is to conduct a review of a commissioner decision in compliance with respective statutes. In addition, provisions were added to clarify that the TEA would dismiss a petition for review without referral to SOAH, and additional guidance for SOAH was added relating to setting deadlines and issuing orders.

Comment: The SOAH expressed concern that the expedited review and 30-day deadlines set forth under §157.1167 for the SOAH review are impractical and lack statutory authority.

Agency Response: The agency partially disagrees and determined that the TEC, §39.152(c), requires the SOAH to conduct an expedited review and issue a final order not later than the 30th day after the date on which the hearing is finally closed. However, the agency has revised §157.1167 at adoption to provide the SOAH with additional guidance.

Comment: The SOAH expressed concern that the expedited review and 30-day deadlines set forth under §157.1186 for the SOAH review are impractical and lack statutory authority.

Agency Response: The agency partially disagrees and determined that the statutory changes set forth in SB 2 were intended to expedite hearings and prevent unnecessary delays of charter revocations and reconstitution of charter governing boards. Nevertheless, the agency has revised §157.1186 at adoption to address the SOAH's concerns and provide the SOAH with additional guidance.

Comment: The SOAH recommended that proposed §157.1155(b) and §157.1183(b) relating to petition for review be amended to clarify that the TEA would dismiss the petition for review without referral to the SOAH.

Agency Response: The agency agrees with this recommendation and has made appropriate changes in §157.1155(b) and §157.1183(b).

DIVISION 1. INFORMAL REVIEW

19 TAC §§157.1121 - 157.1123

The new sections are adopted under the Texas Education Code (TEC), §12.104, which makes applicable to charter schools certain rules relating to public education law; TEC, §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; TEC, §12.116, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC,

§39.058, which requires the agency to provide an informal review of preliminary findings after completion of an on-site investigation; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools; TEC, §39.152, which authorizes the commissioner to adopt procedural rules for a State Office of Administrative Hearings review of a challenge to the commissioner's decision to close a district, campus or charter school, or to pursue alternative management of a district campus or charter school; and TEC, §42.258, which authorizes the agency to recover overallocated funds.

The new sections implement the TEC, §§12.104, 12.1141, 12.115, 12.116, 12.1162, 39.058, 39.102, 39.103, 39.104, 39.152, and 42.258.

§157.1121. *Applicability.*

This division applies to:

(1) an investigation under the Texas Education Code (TEC), Chapter 39, Subchapter C;

(2) an assignment of a monitor, conservator, or management team under the TEC, Chapter 39;

(3) an over-allocation to an open-enrollment charter school described under §100.1041(e) of this title (relating to State Funding);

(4) a determination to deny a petition for renewal and allow a charter of an open-enrollment charter school to expire pursuant to the TEC, §12.1141(d);

(5) a decision subject to review by the State Office of Administrative Hearings under Division 3 of this subchapter (relating to State Office of Administrative Hearings Substantial Evidence Review) or Division 4 of this subchapter (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review); and

(6) an investigation made subject to this division at the sole discretion of Texas Education Agency staff.

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

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DIVISION 2. FORMAL REVIEW

19 TAC §§157.1131 - 157.1137

The new sections are adopted under the Texas Education Code (TEC), §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; and TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools.

The new sections implement the TEC, §39.102 and §39.104.

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DIVISION 3. STATE OFFICE OF ADMINISTRATIVE HEARINGS SUBSTANTIAL EVIDENCE REVIEW

19 TAC §§157.1151, 157.1153, 157.1159, 157.1161, 157.1163

The repeals are adopted under the Texas Education Code (TEC), §12.104, which makes applicable to charter schools certain rules relating to public education law; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools; TEC, §39.107, authorizes the commissioner to close, reconstitute, repurpose or order alternative management of a campus, and to adopt necessary rules; and TEC, §39.152, which authorizes the commissioner to adopt procedural rules for a State Office of Administrative Hearings review of a challenge to the Commissioner's decision to close a district, campus or charter school, or to pursue alternative management of a district campus or charter school.

The repeals implement the TEC, §§12.104, 39.102, 39.103, 39.104, 39.107, and 39.152.

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

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404167

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



19 TAC §§157.1151, 157.1153, 157.1155, 157.1157, 157.1165, 157.1167, 157.1169, 157.1173

The new sections and amendments are adopted under the Texas Education Code (TEC), §12.104, which makes applicable to charter schools certain rules relating to public education law; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools; TEC, §39.107, authorizes the commissioner to close, reconstitute, repurpose or order alternative management of a campus, and to adopt necessary rules; and TEC, §39.152, which authorizes the commissioner to adopt procedural rules for a State Office of Administrative Hearings review of a challenge to the Commissioner's decision to close a district, campus or charter school, or to pursue alternative management of a district campus or charter school.

The new sections and amendments implement the TEC, §§12.104, 39.102, 39.103, 39.104, 39.107, and 39.152.

§157.1155. *Petition for Review.*

(a) A school district or an open-enrollment charter school subject to a decision defined by §157.1151 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) a petition for review of the decision or determination under this division. The petition must be received by the TEA not later than the 15th calendar day after the notice is sent to the petitioner.

(1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits to the decision.

(2) The petition for review shall concisely state, in numbered paragraphs:

(A) if alleging the decision was made in violation of a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the decision;

(B) if alleging the decision was made in excess of the TEA's statutory authority, the TEA's statutory authority and the specific facts supporting a conclusion that the decision was made in excess of this authority;

(C) if alleging the decision was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the decision was made through unlawful procedure;

(D) if alleging the decision was affected by other error of law, the law violated and the specific facts supporting a conclusion that the decision violated that law;

(E) if alleging the decision was not reasonably supported by substantial evidence considering the reliable and probative evidence, each finding, inference, conclusion, or decision that was unsupported by substantial evidence;

(F) if alleging the decision was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and

(G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the school district or charter school that were prejudiced by such violation, error, or defect.

(3) A petition for review shall further contain:

(A) a concise statement of the relief sought by the petitioner; and

(B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.

(4) A request for relief in a review under this division may not be made orally or as part of the record at a prehearing conference or hearing.

(b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review and final action without further review and without referral to the State Office of Administrative Hearings (SOAH).

(c) The TEA shall transmit the petition for review to the SOAH with a request that it be docketed.

(d) The TEA shall file a notice of hearing, present evidence and arguments, and otherwise fully participate as a party in the contested case proceeding.

§157.1157. *Standard of Review.*

(a) In response to a challenge to a commissioner of education decision under the Texas Education Code (TEC), §39.152, the administrative law judge shall conduct a hearing to consider evidence and arguments regarding the decision. Based on the evidence and arguments presented, the administrative law judge shall review the commissioner's decision under the substantial evidence rule as provided by Government Code, §2001.174 and §2001.175, and judicial case precedents construing those provisions.

(b) The State Office of Administrative Hearings (SOAH) may not substitute its judgment for the judgment of the commissioner on questions committed to the commissioner's discretion. Questions committed to the commissioner's discretion include, but are not limited to, the following:

(1) any questions arising under a statute, rule, or other legal standard that requires or permits the commissioner to make a decision within general legal guidelines that do not mandate a specific result under the circumstances; and

(2) the execution of any act authorized or required to be taken by the commissioner.

(c) The SOAH may not substitute its judgment for the judgment of the commissioner on the weight to be assigned the evidence before the commissioner.

(d) The SOAH may affirm the commissioner decision in whole or in part.

(e) The SOAH shall reverse and remand the decision for further proceedings if substantial rights of the school district or open-enrollment charter school have been prejudiced because the administrative findings, inferences, conclusions, or decisions of the commissioner are:

(1) in violation of a statutory provision;

(2) in excess of the commissioner's authority;

(3) made through unlawful procedure;

(4) affected by other error of law;

(5) not reasonably supported by substantial evidence considering the reliable and probative evidence as a whole; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(f) An order of remand may not direct or control the commissioner's exercise of discretion on a matter committed to the commissioner's discretion by §157.1171(b) of this title (relating to Final Decision) and TEC, Chapter 39.

(g) On remand, the commissioner shall apply the facts and law as determined by the SOAH to reach a new decision in light of all the circumstances of the case.

(h) The commissioner shall continue on remand to exercise discretion over the accreditation decision as required by §157.1171(b) of this title and TEC, Chapter 39.

§157.1167. *Expedited Review.*

(a) The State Office of Administrative Hearings (SOAH) shall expedite its review of a challenge under this division in order to meet the requirements of this section.

(b) The administrative law judge shall issue a pre-hearing order initially setting a date for closure of the record that is not later than the 30th calendar day after the date the petition for review is transmitted to the SOAH.

(c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.

(d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.

(e) The administrative law judge shall issue a final order not later than the 30th calendar day after the date on which the record is finally closed.

(f) In all cases where the matter is docketed at the SOAH on or before March 15, the administrative law judge shall issue a final order not later than May 31 of the same year.

(g) In setting deadlines and issuing orders, the SOAH shall consider the following:

(1) the need for parents and students to evaluate, select, and enroll in another school district or open-enrollment charter school;

(2) the need for educators and staff to find other employment;

(3) the need for the school district or open-enrollment charter school to engage in an orderly termination of its operations; and

(4) the need for the Texas Education Agency to facilitate and complete an orderly termination of the operations of a school district or open-enrollment charter school.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



DIVISION 4. STATE OFFICE OF ADMINISTRATIVE HEARINGS ARBITRARY AND CAPRICIOUS OR CLEARLY ERRONEOUS REVIEW

19 TAC §§157.1181 - 157.1189

The new sections are adopted under the Texas Education Code (TEC), §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; TEC, §12.116, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder; and TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law.

The new sections implement the TEC, §§12.1141, 12.115, 12.116, and 12.1162.

§157.1183. *Petition for Review.*

(a) An open-enrollment charter school subject to a decision defined by §157.1181 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) a petition for review of the decision or determination under this division. The petition must be received by the TEA not later than the 15th calendar day after the notice is sent to the petitioner.

(1) The petition for review shall include a copy of the challenged decision and any attachments or exhibits to the decision.

(2) The petition for review shall concisely state, in numbered paragraphs:

(A) if alleging the decision was arbitrary or capricious, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected;

(B) if alleging the decision was clearly erroneous, each finding, inference, conclusion, or decision affected and the specific facts supporting a conclusion that each was so affected; and

(C) for each violation, error, or defect alleged under subparagraphs (A) and (B) of this paragraph, the substantial rights of the school district or charter school that were prejudiced by such violation, error, or defect.

(3) A petition for review shall further contain:

(A) a concise statement of the relief sought by the petitioner; and

(B) the name, mailing address, telephone number, and facsimile number of the petitioner's representative.

(4) A request for relief in a review under this division may not be made orally or as part of the record at a prehearing conference or hearing.

(b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review and final action without further review and without referral to the State Office of Administrative Hearings (SOAH).

(c) The TEA shall transmit the petition for review to the SOAH with a request that it be docketed.

(d) The TEA shall file a notice of hearing, present evidence and arguments, and otherwise fully participate as a party in the contested case proceeding.

§157.1184. *Standard of Review.*

(a) In response to a challenge to a commissioner of education decision under or subject to the Texas Education Code, §§12.1141, 12.115, or 12.116, the administrative law judge shall conduct a hearing to consider evidence and arguments regarding the decision. Based on the evidence and arguments presented, the administrative law judge shall review the commissioner's decision. The administrative law judge shall uphold a decision by the commissioner unless the judge finds the decision is arbitrary and capricious or clearly erroneous.

(b) A decision of the administrative law judge is final and may not be appealed.

§157.1186. *Expedited Review.*

(a) The State Office of Administrative Hearings (SOAH) shall expedite its review of a challenge under this division in order to meet the requirements of this section.

(b) The administrative law judge shall issue a pre-hearing order as soon as practical after the petition for review is transmitted to the SOAH, setting all necessary deadlines.

(c) The administrative law judge may grant a continuance of the date set in subsection (b) of this section only for good cause shown.

(d) The administrative law judge may not order a settlement conference, mediation, or other form of alternative dispute resolution.

(e) The administrative law judge shall issue a final order as soon as practical after the petition for review is transmitted to the SOAH.

(f) In all cases where the matter is docketed at SOAH on or before March 15, the administrative law judge shall issue a final order not later than May 31 of the same year.

(g) In setting deadlines and issuing orders, the SOAH shall consider the following:

(1) the need for parents and students to evaluate, select, and enroll in another school district or open-enrollment charter school;

(2) the need for educators and staff to find other employment;

(3) the need for the school district or open-enrollment charter school to engage in an orderly termination of its operations; and

(4) the need for the Texas Education Agency to facilitate and complete an orderly termination of the operations of a school district or open-enrollment charter school.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



DIVISION 5. CONFLICTS

19 TAC §157.1191

The new section is adopted under the Texas Education Code (TEC), §12.104, which makes applicable to charter schools certain rules relating to public education law; TEC, §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; TEC, §12.116, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder; TEC, §12.1162, which authorizes the commissioner to adopt rules to implement sanctions against an open-enrollment charter school based on violations of Texas law; TEC, §39.058, which requires the agency to provide an informal review of preliminary findings after completion of an on-site investigation; TEC, §39.102, which authorizes the commissioner to impose interventions and sanctions, or take other action, if a school district or open-enrollment charter school does not satisfy accreditation criteria, academic accountability standards, or financial accountability standards; TEC, §39.103, which authorizes the commissioner to impose interventions and sanctions, or take other action, for campuses; TEC, §39.104, which authorizes the commissioner to adopt rules to implement procedures to impose interventions and sanctions under the TEC, Chapter 39, relating to open-enrollment charter schools; TEC, §39.107, authorizes the commissioner to close, reconstitute, repurpose or order alternative management of a campus, and to adopt necessary rules; TEC, §39.152, which authorizes the commissioner to adopt procedural rules for a State Office of Administrative Hearings review of a challenge to the Commissioner's decision to close a district, campus or charter school, or to pursue alternative management of a district campus or charter school; and TEC, §42.258, which authorizes the agency to recover overallocated funds.

The new section implements the TEC, §§12.104, 12.1141, 12.115, 12.116, 12.1162, 39.058, 39.102, 39.103, 39.104, 39.107, 39.152, and 42.258.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§200.2 - 200.4, 200.6 - 200.8

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§200.2 - 200.4 and 200.6 - 200.8, concerning the reporting of a health care-associated infection (HAI) contributing to the death of a patient. The amendments to §§200.2 - 200.4 and 200.6 - 200.8 are adopted without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3360), and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with House Bill (HB) 3285, 83rd Legislature, Regular Session, 2013, that requires facilities to specify whether a health care-associated infection resulted in the death of a patient. The verbiage "resulted in death" in HB 3285 will be included in the rules to state "contributed to" in order to remain compliant with the National Health and Safety Network (NHSN) definition due to the reliance of the department on the NHSN database for this information.

HB 3285 amended Health and Safety Code, Chapter 98, Reporting of Health Care-Associated Infections and Preventable Adverse Events, §98.103, Reportable Infection, by adding Section 1, subsection (e) stipulating that "a report made under this section must specify whether the infection resulted in the death of the patient;" and §98.106, Departmental Summary, "that the department will compile and make available to the public a summary of health care facilities that reported infections, including whether the infections resulted in the death of the patient."

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 200.2 - 200.4 and 200.6 - 200.8 have been reviewed, and the department has determined

that reasons for amending and adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

An amendment to §200.2 clarifies that facilities shall submit health care-associated infections death data, including whether the HAI contributed to a patient's death, as specified in §200.3, §200.4, §200.6, and §200.7.

An amendment to §200.3 describes how facilities shall report health care-associated infections contributing to a patient's death.

An amendment to §200.4 will include facilities to report deaths from health care-associated infections as an event to report.

An amendment to §200.6 defines when to initiate reporting of death data and also to report whether an HAI contributed to the death of a patient.

An amendment to §200.7 lists the schedule of when to report death data.

An amendment to §200.8 lists the schedule of when to report corrections of death data previously submitted.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Hospital Association, hospital based infection preventionists, and the Dallas-Fort Worth Chapter of the Association for Professionals in Infection Control and Epidemiology. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §200.2, commenters stated that infection preventionists are not qualified to determine "whether the HAI contributed to a patient's death."

Response: The department disagrees because this information is required to be entered by all facilities that participate in National Healthcare Safety Network (NHSN) HAI reporting as part of the agreement between the facility and NHSN. Facilities should continue to follow the guidance given by the NHSN which defines an HAI that contributed to death as an event that "is assessed by surveillance personnel as having contributed to death. That is, the event either directly caused death or exacerbated an existing disease condition which then led to death." No changes were made to the rule as a result of the comments.

Comment: Concerning §200.2, commenters questioned why HAIs that contribute to a patient's death must be reported.

Response: The department disagrees because HB 3285 requires specified facilities to report HAI data and to specify whether an HAI contributed to the death of the patient. The department is required to publicly display this information that facilities report. No changes were made to the rule as a result of the comments.

Comment: Concerning §200.3, commenters stated that the proposed amendment change is not consistent with the language of NHSN.

Response: The department disagrees because the language does follow NHSN HAI reporting and this language can be found in the documents called *Data Collection Forms Table Instructions and Key Terms* found on the NHSN website. No changes were made to the rule as a result of the comments.

Comment: Concerning §200.6, commenters requested for an amendment to the rules to specify that the HAIs that contributed to a patient's death occurred while the patient was hospitalized.

Response: The department disagrees because facilities are to continue to follow the established NHSN definitions for reporting HAI data. No changes were made to the rule as a result of the comments.

Comment: Concerning §200.8, commenters stated that facilities have the opportunity to explain how a HAI may have contributed to a patient's death.

Response: Facilities will continue to be able to comment on their publicly reported data, and facilities may choose this opportunity to explain the death while adhering to the Health Insurance Portability and Accountability Act (HIPAA) regulations. No changes were made to the rule as a result of the comments.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by the Health and Safety Code, §98.101, which authorizes the Executive Commissioner of the Health and Human Services Commission to implement Chapter 98 by adopting rules; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the sections implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on August 28, 2014.

TRD-201404136

Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: April 25, 2014

For further information, please call: (512) 776-6972

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE

ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §702.7

The Cancer Prevention and Research Institute of Texas (Institute) adopts an amendment to §702.7, regarding the Institute's gift reporting requirements, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4614). The section will not be republished.

Reasoned Justification

The amendment clarifies when a gift falls under an exception from the Institute's reporting requirement. Language is changed to mirror language found in other, corresponding statutes in order to reduce confusion.

The Texas Health and Safety Code §102.106 directs the CPRIT Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee, the Program Integration Committee, and Institute employees. In addition, these amendments are adopted pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes.

The Oversight Committee approved the final order adopting the amendments on August 20, 2014. The Institute accepted public comments in writing and by fax through July 14, 2014. No comments were received concerning the proposed amendment to §702.7.

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated §102.106, which directs the Oversight Committee to adopt conflict of interest rules, and §102.108 and §102.109, which provides the Institute with broad authority to adopt rules to administer the chapter.

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

Filed with the Office of the Secretary of State on August 28, 2014.

TRD-201404147

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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Proposal publication date: June 13, 2014

For further information, please call: (512) 305-8422



CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.6, 703.8, 703.11, 703.13, 703.14, 703.20, 703.21

The Cancer Prevention and Research Institute of Texas (Institute) adopts amendments to §§703.3, 703.6, 703.8, 703.11, 703.13, 703.14, 703.20, and 703.21, concerning grants for cancer prevention and research, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4616). The sections will not be republished.

Reasoned Justification

These amendments allow for the designation of co-chairpersons by either a Peer Review Panel chairperson or Review Council chairperson and specify that it is the chief executive officer, rather than the chief compliance officer, who is responsible for recommending corrective actions for variances in the grant review process. The amendments clarify document submission requirements for grant recipients. Specifically, the amendments provide more explanation regarding requirements, deadlines, and consequences for late submission of required documents including audits, close out documents, financial status reports, grant progress reports, and tranche progress reports. Amended language also clarifies when reimbursement costs may be waived for grant recipients who have received advance payment of funds. The amendments are adopted pursuant to and in satisfaction of the provisions Texas Health and Safety Code, Chapter 102, and other relevant statutes.

The Oversight Committee approved the final order adopting the amendments to Chapter 703 rules on August 20, 2014. The Institute accepted public comments in writing and by fax through July 14, 2014. No comments were received concerning the proposed amendments for Chapter 703.

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated §§102.8, 102.251, 102.255, and 102.260, which provide the Institute with the authority to adopt rules and the Oversight Committee to establish procedures for the grant award process.

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

Filed with the Office of the Secretary of State on August 28, 2014.

TRD-201404148

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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Proposal publication date: June 13, 2014

For further information, please call: (512) 305-8422



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

DIVISION 1. BEI INTERPRETER CERTIFICATION

40 TAC §§109.205, 109.221, 109.231

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments to §109.205, concerning Definitions; §109.221, concerning Validity of Certificates and Re-

certification; and new §109.231, concerning Schedule of Fees, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4412) and will not be republished.

BACKGROUND AND JUSTIFICATION

DARS adopts these changes to establish a policy for BEI certificate holders who hold or have been awarded more than one BEI certificate. The goal is to streamline the renewal and recertification process by assigning a single, new five-year certification cycle designating the same renewal and recertification date. In addition, a BEI fee schedule is incorporated into rule. The fee amounts to be adopted represent an increase in the current fees and are intended to recover some of the costs of the certification program as authorized by Texas statute.

SECTION-BY-SECTION SUMMARY

DARS adopts amended §109.205, Definitions, which adds a definition for multiple-certificate holder to establish or clarify the meaning for current and future BEI certificate holders.

DARS adopts amended §109.221, Validity of Certificates and Recertification, which adds language to strengthen the renewal and recertification requirements for current or former certificate holders and expands the rule to include multiple-certificate holder status and its application.

DARS adopts new §109.231, Schedule of Fees, which incorporates a fee schedule for current BEI certificate holders and future test candidates or examinees for BEI certification. The adopted new rule is intended to recover some of the costs of the certification program as authorized by Texas Human Resources Code, Chapter 81.

COMMENTS

No comments were received regarding adoption of the rules.

STATUTORY AUTHORITY

The amendments and new rule are adopted under the authority of Texas Human Resources Code, Chapters 81 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

Filed with the Office of the Secretary of State on August 26, 2014.

TRD-201404101

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: September 15, 2014

Proposal publication date: June 6, 2014

For further information, please call: (512) 424-4050



PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The State Pension Review Board (PRB or the Board) adopts new 40 TAC Chapter 607, concerning Public Retirement System Minimum Educational Training Program, with changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4942). The new chapter contains three subchapters consisting of the following sections: Subchapter A, §§607.101, 607.103 - 607.105, and 607.107, concerning General Provisions; Subchapter B, §§607.110, 607.111, and 607.113, concerning Minimum Educational Training Requirements for Trustees and System Administrators; and Subchapter C, §§607.120, 607.122, 607.124, 607.126, 607.128, and 607.130, concerning Minimum Educational Training Program Sponsors.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill 13 (H.B. 13), enacted by the 83rd Legislature (2013), amended the Texas Government Code by adding §801.211. The new section directs the Board to develop and administer an educational training program for trustees and system administrators of Texas public retirement systems. The Board, among other things, is further directed to establish minimum training requirements and accredit other training programs. The rules adopted under Chapter 607 are necessary to comply with H.B. 13 and implement the provisions contained in §801.211. Additionally, the Board under §801.201(a) of the Government Code has the authority to adopt rules for the conduct of its business. The purpose of these new rules is to clearly establish a minimum standard for training/education for trustees and system administrators of Texas public retirement systems, as mandated by §801.211 of the Government Code. As part of the Minimum Educational Training Program created by Chapter 607, the Board established the required minimum training hours and content areas that will help provide a standardized, foundational level of training to all trustees and system administrators. The Board adopted a seven-hour core-content training requirement for the first year of service, and continuing education requirements for subsequent years of service in either core or non-core content areas. The core content areas include introductory level courses in content areas that will help all new trustees and system administrators to responsibly fulfill their duties. In continuing education, trustees and system administrators may take refresher courses and may take training in either core or non-core content areas based on the specific needs of the systems. Additionally, the rules establish the standards and procedure for education providers and public retirement systems that conduct in-house training to apply to become Board-accredited sponsors to offer the Minimum Educational Training Program. The Board adopted the new rules with changes to the following sections of Chapter 607 to clarify or correct the rules: §§607.104, 607.107, 607.110, 607.111, 607.113, 607.120, 607.122, 607.124, 607.126, and 607.128.

SECTION-BY-SECTION SUMMARY

Revisions to new §607.104, as published, clarify certain existing definitions and define a new term used in the new rules.

Revisions to new §607.107, as published, clarify the language to give clear authority to the Board and combine subsection (a)(2) and (3).

Revisions to new §607.110, as published, correct typographical errors and clarify certain provisions, including the applicability of the continuing education requirements to re-elected and reappointed trustees.

Revisions to new §607.111, as published, adds a subsection clarifying the requirement for current trustees and system administrators to complete the continuing education requirements after having completed the core training by December 31, 2016.

Revisions to new §607.113, as published, clarify certain terms used in the rule.

Revisions to new §607.120, as published, correct typographical errors and allow training by teleconference.

Revisions to new §607.122, as published, correct typographical errors and clarify certain terms used in the rule.

Revisions to new §607.124, as published, correct typographical errors.

Revisions to new §607.128, as published, correct typographical errors and clarify certain terms used in the rule.

BOARD IDENTIFIED CHANGES

To bring clarity to the rules relating to continuing education requirements for current trustees and system administrators, the Board, on staff's recommendation, modified §607.111 by adding a subsection more clearly expressing the requirement under the rule for current trustees and system administrators to complete the continuing education requirements after having completed the core training by December 31, 2016. The staff recommended this change to the Board in response to a question raised by a constituent after the comment period closed. Subsequently, staff determined that this provision was not clearly addressed in the proposed version of the rules. The Board agreed with staff recommendation and revised the rule accordingly.

SUMMARY OF PUBLIC COMMENTS

The 31-day comment period ended on July 28, 2014. During this period, the PRB received comments regarding the new rules from a commenter and two organizations: the Texas Municipal Retirement System (TMRS) and the Texas County and District Retirement System (TCDRS). The commenters were not against the adoption of the rules but made recommendations for changes to clarify the rules. The Board has reviewed the comments received during the public comment period, and a summary of the comments and the Board's responses follows.

Comment: A commenter proposed using the term "position on the governing body" instead of "office" in §607.104(3) relating to the definition of "First Year of Service". The commenter stated that the term "office" is not the typical term used for trustee positions.

Response: The Board agrees that the term "office" should be changed to "position on the governing body" and has revised the rule accordingly.

Comment: A commenter proposed revising the term "may include" to "may include, but is not limited to" in §607.104(7) relating to the definition of "MET Activity," to clarify that the listing of activities is not all-inclusive.

Response: The Board agrees that the listing of activities is not all-inclusive and has revised the rule accordingly.

Comment: A commenter proposed defining the term "net actual instruction time" because the term is used several times in the document, including in §607.110(e).

Response: The Board agrees that the term "net actual instruction time" should be defined and has revised the rule by adding the definition.

Comment: A commenter proposed defining the term "suitable facility" used in §607.120(a)(2).

Response: Suitable facility should be interpreted generally to mean a facility that constitutes an acceptable learning environment with appropriate lighting, temperature controls, etc. No changes were made in response to this comment.

Comment: A commenter suggested clarifying that the exemption contained in §607.105(1)(A) and (B) applies only to a person sitting as a council or commission member, and not also as a trustee.

Response: The exemption was proposed to accommodate the unique governance structures of public retirement systems (PRS) organized under Chapter 810 of the Texas Government Code per their request through the Educational Training Program Working Group process. Certain systems organized under Chapter 810 that will be directly affected have reviewed this language and have not raised similar issues. The rules exempt members of a public retirement system's sponsoring entity board that is only responsible for the creation, termination, and amendment of a PRS; and members of a committee appointed by a PRS's sponsoring entity board to act in an advisory or oversight capacity only by providing guidance or recommendations. However, if a council or commission member is serving as a trustee of the actual governing body of a PRS, that individual is not exempt under this rule. No changes were made in response to this comment.

Comment: A commenter proposed clarifying the language in §607.107(a) to read the PRB may "grant an exemption to a PRS for certain types of system administrators" rather than "consider granting an exemption to certain types of system administrators" to clearly give authority to the Board and to correspond with language used in §607.107(b).

Response: The Board agrees that the language in §607.107(a) should be clarified to read "may grant an exemption to a PRS for certain types of system administrators" and has revised the rule accordingly.

Comment: A commenter recommended combining §607.107(a)(2) and (3) into a single §607.107(a)(2) because the provisions of subsection (a)(3) appeared to be intended to apply to the situation described in subsection (a)(2), but not to the situation described in subsection (a)(1). The commenter stated that if that is the intent, then (2) and (3) should be combined into a single subsection (a)(2).

Response: The Board agrees, and to clarify has revised the rule by combining §607.107(a)(2) and (3) into a single §607.107(a)(2).

Comment: A commenter pointed out a typographical error by questioning whether the requirement in §607.110(a) only applied to trustees or was intended to apply to system administrators, as well, where the rule in other instances applies requirements to both. The commenter also proposed to add the term "credit" before "hours" for clarity and consistency, since "credit hours" is a defined term.

Response: The requirement is intended to apply to system administrators as well as trustees. The Board responded to the first part of the comment by adding "or system administrator" to the rule. The Board also agrees with adding "hours" before "credit" and has revised the rule accordingly.

Comment: A commenter proposed to use the term "system administrator" instead of "administrator" in various rules, including §§607.110(b), 607.110(f), 607.111(a), and 607.126(e) since "system administrator" is a defined term in the chapter.

Response: The Board agrees and has revised the rules accordingly, including updating §607.128(a) as well for consistency.

Comment: A commenter, for clarification, proposed to add language stating "or any combination thereof" in §607.110(b) to clearly show that after the first year of service and the initial requirements are met, continuing education can be met from courses in either core or non-core content areas.

Response: The Board agrees that the language should be clarified to clearly convey the intent of allowing courses in either core or non-core content areas. The Board has revised the rule accordingly.

Comment: A commenter proposed modifying the language in §607.110(b)(2) from "the Board may consider allowing" to "the Board may allow" to clearly give authority to the Board.

Response: The Board agrees and the rule has been revised to reflect the suggested change.

Comment: A commenter stated that their trustees serve two-year terms. The provision in §607.110(c) is not completely clear when the trustees' continuing education cycle would start. The commenter requested clarification that continuing education would begin on the first day of a trustee's subsequent term.

Response: The Board agrees that the provision relating to continuing education (CE) for reappointed or re-elected trustees is unclear and revised §607.110(c) to reference the CE requirement for re-elected or reappointed trustees contained in §607.113(b).

Comment: A commenter stated that a trustee should be allowed CE credit for training activities completed during the time a trustee is exempt from the CE requirements. The commenter proposed to amend §607.110 by adding a subsection to allow CE credits for MET activities completed during the time a trustee is exempt from the CE requirement.

Response: This comment primarily relates to trustees with even-numbered terms, which make up almost 50 percent of all trustees. Making this change would increase the administrative work required greatly as the Board's staff would be tracking a CE look back on an ongoing basis for a large group of trustees. Since the CE requirement is only four hours every two years, the Board finds it reasonable to require trustees to earn those hours during their regular, full two-year CE term. Additionally, this change would be very difficult from an implementation perspective because of the database programming that would be involved in keeping track of CE taken during times when it is not required. No changes were made in response to this comment.

Comment: A commenter proposed technical revisions to various rules, including §607.110(e) and §607.122(a), (b), and (c) by changing the use of the term "credit" to "credit hours" and "training" to "MET activity" as they are defined terms in the chapter.

Response: The Board agrees with the proposed technical modifications and has revised the rules accordingly.

Comment: A commenter stated that many of their trustees have completed the Certified Trustee Training program offered by the Texas Association of Public Employee Retirement Systems (TEXPERS) prior to January 1, 2013. The commenter requested credit for all certified trustee training programs completed by trustees at any time during their service provided there has not been a break in service since the trustee received that training.

Response: The Board formed a working group to allow for extensive public participation and discussion during the development of the minimum educational training requirements. The working group discussed the look-back at length and agreed that two years was a suitable time period. Staff presented multiple options including exempting current trustees entirely from the core requirement and subjecting them only to CE. The Board decided that a two-year look-back was appropriate both to ensure a basic, uniform standard for all and because issues facing trustees, including legislative action, change, and trustee knowledge must be kept current. No changes were made in response to this comment.

Comment: A commenter requested clarification to language in §607.113(a)(1) to read "for the same PRS" instead of "by the same PRS". The commenter stated the Governor appoints their trustees, not the system itself.

Response: The Board agrees and has revised the rule accordingly.

Comment: A commenter stated that in §607.113(a)(4) the terms "appointed" and "rehired" are being used interchangeably and the term "appointed" may not be applicable to all. The commenter proposed revising "appointed" to say "appointed or hired".

Response: The Board agrees but prefers the term "hired" because system administrators are not usually appointed and has revised the rule accordingly.

Comment: A commenter proposed a time period of 5 years for the break in service to repeat the core training for reappointed and rehired trustees and system administrators in §607.113(c).

Response: The working group (appointed by the Board to make recommendations regarding the development of the minimum educational training program) had a lengthy discussion on this issue, after which they recommended to the Board to exempt reappointed and rehired persons from repeating the core training only if they have a break in service of no more than two years. The Board then determined two years to be an appropriate time period. No changes were made in response to this comment.

Comment: A commenter proposed a technical correction in §607.120(a)(1) to include the language "as referenced in".

Response: The Board agrees and has revised the rule accordingly.

Comment: A commenter requested clarification relating to the program standard in §607.120(a)(3). The commenter wanted to know if during an 8-hour MET activity, a presenter does a 15 minute promotion for his/her company at the end, does that "kill" the other 7 hour 45 minute chance for credit?

Response: If time is spent on anything other than instruction, including disallowed activities such as promotion or breaks, that time can simply be deducted from the credit hours of the course

and would not "kill" the rest of the credit hours. This question is clarified by the addition of the definition of "net actual instruction time" in §607.104(8).

Comment: A commenter requested clarification whether a training by telecom was allowed in §607.120(a)(4).

Response: Yes, training by teleconference will be allowed and the rule has been revised accordingly.

Comment: A commenter proposed rephrasing a provision in §607.120(d) from a negative to a positive tone.

Response: The board disagrees. This provision is worded in the negative to discourage the practice of claiming MET credit hours for staff meetings and other settings that do not meet the requirements of the chapter. Rephrasing this provision could lend vagueness to the rule. No changes were made in response to this comment.

Comment: A commenter proposed to change the term "brochure" to "materials" in §607.122(a).

Response: The Board agrees and has revised the rule accordingly.

Comment: A commenter proposed to allow statewide public retirement systems to apply for accreditation but not be subject to certain standards contained in §607.124(b)(1) - (3).

Response: These standards are adopted to apply uniformly to every retirement system. Adopting separate standards for statewide systems or any other type of system could be perceived as giving preferential treatment to those systems over the systems that would be subject to the training requirements. No changes were made in response to this comment.

Comment: A commenter requested clarification whether the term "Board" used in §§607.124(b)(3), 607.124(c) and 607.128(c) should be capitalized to mean the Pension Review Board.

Response: The Board agrees the term "Board" should be capitalized to mean the Pension Review Board in those sections. The rules have been revised accordingly.

Comment: A commenter proposed that a public retirement system should not have to reapply for accreditation in §607.124(h) unless requested by PRB. The commenter recommended limiting this waiver to statewide retirement systems or systems with assets over \$1 billion.

Response: The standard of renewal should apply uniformly to every retirement system. Adopting separate standards for statewide systems or any other type of system could be perceived as giving preferential treatment to those systems over the systems that would be subject to the training requirements. Renewal after an initial two-year period and then every four years thereafter is a reasonable requirement for a system that wishes to remain accredited. No changes were made in response to this comment.

Comment: A commenter proposed to make certain program standards contained in §607.126(e), (f) and (g) non-applicable to statewide retirement systems that become accredited sponsors.

Response: The standards of providing certificates of completion and requiring instructor evaluations should apply uniformly to every system. These requirements are best practices in the field of continuing education. Certificates allow the participants,

and the PRB to verify attendance and participation. Instructor evaluations help ensure that the training quality meets the expectations of all groups. Additionally, adopting separate standards for statewide systems or any other type of system could be perceived as giving preferential treatment to those systems over the systems that would be subject to the training requirements. Recognizing that these requirements may be new to the retirement systems as opposed to existing training providers, and to make the process easier for the systems, the Board could provide templates for certificates of completion and instructor evaluations. No changes were made in response to this comment.

Comment: A commenter stated that the term "individual" used in §607.128(a) is not a defined term in the rules and has been used differently in other sections. To avoid confusion, the commenter proposed to replace the term "individual" with "case-by-case".

Response: The Board agrees has revised the rule accordingly.

Comment: A commenter stated that the majority of trustee training provided by its retirement system is accomplished at board meetings. The commenter stated that its retirement system is not in a position to have the PRB approve their board materials 30 days in advance. Other retirement systems may also be in this same situation. The commenter proposed to indicate that the PRB may approve applications filed after the activity in "certain" cases, rather than "exceptional" cases.

Response: The rule does not require the Board's approval to be received 30 days in advance, but requires that the application for approval be submitted to the Board 30 days in advance of an MET activity. The term "exceptional" is preferred over "certain" to explain that only in exceptional cases will the Board approve applications submitted less than 30 days in advance of the MET activity or after the MET activity. The term "certain" may introduce vagueness into the rule. No changes were made in response to this comment.

Comment: A commenter stated that the rule in §607.128(c) relates to the Board's ability to accept or reject a sponsor or a submitted activity and pointed out a typographical error where the term "activity" was missing in the rule. Accordingly, the commenter proposed to include the terms "or activity" in §607.128(c).

Response: The Board agrees and has revised the rule accordingly.

Comment: A commenter asked about the reporting of MET credit hours to the PRB, if any required.

Response: Reporting will be covered in the second batch of rules, which will be proposed to the Board at its August 28 meeting. Each system will report its training hours to the PRB. The Board envisions each system's administrator, or their designee, submitting the hours for themselves and the system's trustees, either through a form or an electronic system.

Comment: A commenter proposed to allow trustees and system administrators to submit non-approved courses for approval after attending the course, like the commenter stated the State Bar does, and to ask for approval on case-by-case basis.

Response: Section 607.128(a)(1) already allows non-approved courses to be submitted for approval after attending. The second part of the comment, changing "individual" to "case-by-case," has already been addressed through a revision made to the rule based on another comment. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

The new rules are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The new rules affect the Texas Government Code Chapter 801.

§607.101. Authority.

This chapter is promulgated under the authority of Texas Government Code, §801.201, relating to rulemaking, and §801.211, relating to a public retirement system educational training program.

§607.103. Purpose.

(a) The Public Retirement System Educational Training Program, as mandated by §801.211 of the Texas Government Code, is intended to ensure that every trustee and system administrator of a public retirement system in Texas pursues the necessary education relating to public pension matters throughout his or her tenure to successfully discharge their duties.

(b) This chapter will establish Minimum Educational Training requirements for Trustees and Administrators to help ensure that these trustees and administrators participate in training activities that maintain and improve their core competencies, and keep them abreast of recent developments in public pension matters and issues impacting their respective duties.

(c) This chapter is not intended to dictate that trustees and system administrators pursue only the Minimum Educational Training, but to set a minimum standard for training/education. Trustees and system administrators are encouraged to pursue additional educational opportunities in public pension-related areas.

§607.104. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

- (1) "Board" means the State Pension Review Board.
- (2) "Credit hour" means the actual amount of instruction time for an MET activity expressed in terms of hours. The number of MET credit hours shall be based on sixty (60) minutes of instruction per hour.
- (3) "First year of service" means the twelve-month period beginning from the date of assuming one's position on the governing body or hiring date.
- (4) "Governing body of a PRS" means, as provided in Texas Government Code §802.001(2).
- (5) "Minimum Educational Training" shall have the same meaning as assigned by §607.110 of this chapter.
- (6) "MET" means Minimum Educational Training.
- (7) "MET activity" means any organized in-person or online pension-related educational activity, which may include, but is not limited to, organized seminars, courses, conferences, lectures, panel discussions, audio, teleconference, video, and digital media presentations, question-and-answer periods, and in-house education.
- (8) "Net actual instruction time" means time spent on instruction, not including any breaks, or other non-educational activities

including promotion of particular products or services as prescribed by §607.120(a)(3) of this chapter (relating to Program Standards for All Sponsors).

(9) "Public retirement system" shall have the same meaning as assigned by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) and retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

(10) "PRS" means public retirement system.

(11) "Sponsor" means an individual or organization offering training programs to trustees and system administrators. The sponsor may or may not have developed the program materials. However, the sponsor is responsible for ensuring the program materials present the necessary learning objectives and for maintaining the documentation required by this chapter.

(12) "Statutorily authorized designee" means an individual other than the trustee, designated by the trustee as authorized under the governing statute of the PRS or any other statute.

(13) "System administrator" means as defined by Texas Government Code §801.001(3) and §802.001(4).

(14) "Trustee" means as provided in Texas Government Code §801.001(4).

§607.105. Applicability.

This chapter is promulgated to establish the MET requirements for the following.

(1) Trustees, as defined in Texas Government Code, §801.001(4), in their capacity as members of the governing body of a PRS, as that term is defined in Texas Government Code §802.001(2). However, this chapter does not apply to:

(A) members of a PRS's sponsoring entity board that is only responsible for the creation, termination and amendment of the PRS; and

(B) members of a committee appointed by a PRS's sponsoring entity board to act in an advisory or oversight capacity only by providing guidance or recommendations.

(2) Statutorily authorized designees serving as members of the governing body of a PRS.

(3) System administrators, as defined by Texas Government Code, §801.001(3) and §802.001(4).

§607.107. Exemption for Certain System Administrators.

(a) The Board may grant an exemption to a PRS for certain types of system administrators from the MET requirements on a case-by-case basis if:

(1) the PRS designates an outside entity (a bank or a financial institution) as the system administrator, and the PRS board of trustees or its designee completes and forwards to the Board a request for exemption on a form provided by the Board indicating the same; or

(2) the PRS does not have a system administrator that meets the statutory definition as contained in the Texas Government Code, §801.001(3) and §802.001(4) and the governing body of the PRS or its designee completes and forwards to the Board a request for exemption, on a form provided by the Board, certifying that the PRS does not have a system administrator. The request shall include a statement affirming that one or more trustees of the PRS are

responsible for the duties of the system administrator and are already subject to the MET requirements.

(b) If the Board granted an exemption to a PRS under subsection (a) of this section and the exemption is no longer applicable, the PRS shall report the same to the Board, and the exemption shall be revoked.

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

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State Pension Review Board

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For further information, please call: (512) 463-1736



SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §§607.110, 607.111, 607.113

STATUTORY AUTHORITY

The new rules are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The new rules affect the Texas Government Code Chapter 801.

§607.110. *Minimum Educational Training Requirements.*

(a) First year of service. A new trustee and a new system administrator shall complete at least seven (7) credit hours of training in the core content areas within the first year of service. The seven credit hours shall include training in all of the core content areas. A trustee or system administrator must earn no less than half a credit hour in each content area. No more than two credit hours earned in any one core content area shall be applied toward meeting the 7-hour minimum requirement contained in this subsection. The core content areas are:

- (1) fiduciary matters;
- (2) governance;
- (3) ethics;
- (4) investments;
- (5) actuarial matters;
- (6) benefits administration; and
- (7) risk management.

(b) Subsequent years of service. A trustee and a system administrator shall complete at least four (4) credit hours of continuing education in either the core content areas in subsection (a) or non-core content areas, or any combination thereof, within each two-year period after the first year of service as a new trustee or new system administrator.

(1) The non-core content areas include:

- (A) compliance;
- (B) legal and regulatory matters;
- (C) pension accounting;
- (D) custodial issues;
- (E) plan administration;
- (F) Texas Open Meetings Act; and
- (G) Texas Public Information Act.

(2) The Board may allow continuing education credit for courses not specifically covered under the non-core content areas on a case-by-case basis.

(c) If a trustee's term will expire before the end of the trustee's two-year continuing education cycle, such trustee will be exempt from the continuing education requirement in subsection (b) of this section for that two-year period; provided, however, that the trustee shall be subject to the continuing education requirements of subsection (b) of this section and as prescribed by §607.113(b) of this chapter upon the trustee's re-election or reappointment.

(d) A trustee serving concurrently on multiple PRS boards and a system administrator employed concurrently by multiple PRSs shall only be required to complete the MET requirements in this section for service with one PRS.

(e) Credit hours for attending MET activities shall be based on net actual instruction time. Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings, and credit hours for attending in-person educational programs shall be based on actual instruction time.

(f) The Board hereby adopts by reference the Curriculum Guide for Minimum Educational Training to provide further direction on core and non-core content areas as contained in subsections (a) and (b)(1) of this section. Trustees and system administrators are encouraged to review the Curriculum Guide for content area guidance.

(g) The Board shall make the Curriculum Guide for Minimum Educational Training available to the PRSs. A PRS can obtain the most current version of the Curriculum Guide for Minimum Educational Training from the offices of the State Pension Review Board and from its web site at <http://www.prb.state.tx.us>.

§607.111. *Minimum Educational Training Requirements for Current Trustees and System Administrators.*

(a) For the purposes of this section, the terms "current trustee" and "current system administrator" shall be limited to a person serving on a PRS board or acting in the capacity of system administrator on January 1, 2015.

(b) Current trustees and current system administrators shall complete the core training requirement in §607.110(a) of this chapter (relating to Minimum Educational Training Requirements) by December 31, 2016.

(c) To fulfill the requirement in subsection (b) of this section, current trustees and current system administrators may receive credit, at the Board's discretion, for certain previous training completed between January 1, 2013 and December 31, 2014 on a case-by-case basis if:

(1) the current trustee or current system administrator requesting previous training credit completes and submits to the Board the request on the appropriate form provided by the Board; and

(2) the previous training substantially meets the core training curriculum described in the Board's Curriculum Guide for Minimum Educational Training.

(3) The Board may require the current trustee or current system administrator to submit information regarding the previous training, including, but not limited to, activity title, description of content or agenda of the completed activity, date of completion, sponsor name and contact information, time devoted to each topic, and any other relevant record of participation.

(d) Current trustees and current system administrators shall complete the continuing education requirement in §607.110(b) of this chapter (relating to Minimum Educational Training Requirements), within each two-year period beginning on January 1, 2017, after completing the core training requirement in §607.110(a) of this chapter by December 31, 2016.

(e) The provisions of this section except those contained in subsection (d) shall expire on December 31, 2016.

§607.113. Minimum Educational Training Requirements for Reappointed and Re-elected Trustees and Rehired System Administrators.

(a) The following provisions shall apply to:

(1) A trustee who is reappointed or re-elected to a subsequent term of service for the same PRS or who leaves one PRS and is appointed as a trustee to another PRS;

(2) A trustee who serves on multiple PRS boards;

(3) A trustee who is subsequently hired by a PRS to serve as system administrator;

(4) A system administrator who is rehired to a subsequent term of employment by the same PRS or who leaves one PRS and is hired as system administrator by another PRS;

(5) A system administrator who is employed by multiple PRSs; and

(6) A system administrator who is subsequently appointed or elected to a PRS board.

(b) Unless more than two years have passed since the last date of the most recent term of service or employment, a person under subsection (a) of this section shall not be required to repeat the core training requirement already completed under §607.110(a) of this chapter (relating to Minimum Educational Training Requirements) but shall complete the continuing education requirement in §607.110(b) of this chapter within each two-year period served. The two-year period shall begin on the first day of assuming or resuming one's position on a governing body or the first day of employment.

(c) If more than two years have passed since the last date of most recent term of service or employment, a person under subsection (a) of this section shall be subject to both the core training requirement within the first year of service as contained in §607.110(a) of this chapter and the continuing education requirement within each two-year period after the first year of service as contained in §607.110(b) of this chapter.

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

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SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

The new rules are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The new rules affect the Texas Government Code Chapter 801.

§607.120. Program Standards for All Sponsors.

(a) MET activities offered by sponsors must comply with the following standards.

(1) An MET activity shall constitute an organized program of learning dealing with matters related to public pensions, including the MET's core or non-core content areas in §607.110 of this chapter (relating to Minimum Educational Training Requirements). Sponsors are encouraged to review the Curriculum Guide as referenced in §607.110 of this chapter for content area guidance.

(2) An MET activity shall be conducted in a suitable facility by an individual or group qualified by professional or academic experience.

(3) An MET activity shall be educational in nature and shall not include the promotion of particular products or services.

(4) An MET activity shall be conducted in person, online via the internet, or by teleconference.

(5) An MET activity shall meet all of the other requirements contained in this chapter.

(b) An MET activity sponsor shall determine, and inform participants, in advance of the course, of the course's learning or content objectives, any necessary prerequisites, the credit hours the course provides for each core and non-core content area, and the total credit hours the course provides.

(c) An MET activity sponsor is responsible for ensuring the participants register their attendance during the MET activity. Sponsors are responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early.

(d) Staff meetings and other settings cannot be claimed for fulfilling the MET requirements if they do not meet the provisions of this chapter.

§607.122. MET Credit Hour Computation for Sponsors.

(a) Credit hours for attending MET activities shall be based on net actual instruction time. Sponsors shall calculate the number of credit hours that should be given for an MET activity offered based on

the net actual instruction time to be spent, and shall indicate the number on the MET activity materials. Fractional credit hours should be stated as decimals.

(b) Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings.

(c) Credit hours for attending in-person educational programs shall be based on actual instruction time.

§607.124. Sponsor Accreditation.

(a) The Board may allow any sponsor of MET to become Board accredited if the sponsor, in the opinion of the Board, demonstrates that it will comply with its obligations to the Board and that its programs will conform to the Board's standards as outlined in:

(1) §607.120 of this chapter (relating to Program Standards for All Sponsors); and

(2) §607.122 of this chapter (relating to MET Credit Hour Computation for Sponsors).

(b) The Board will also require that each organization or individual applying to become a Board-accredited MET sponsor agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the Board or to the Board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization or individual applying to become a Board accredited MET sponsor must submit an application on a form provided by the Board. The Board will consider for approval only applications that are complete. As part of the application process, the Board may require the sponsor to submit information regarding its organization, purpose, history of providing educational training activities, course outlines, or such additional information that the Board may deem relevant.

(d) The Board shall review each application and notify the sponsor of its acceptance or rejection. Approval of accredited sponsor status will be based upon information received with the application, and such other information the Board shall deem relevant including, but not limited to, course offering and attendance history, approvals and denials of accreditation by other governmental entities, and complaints concerning past programs or the marketing thereof. An acceptance in any given year shall not bind the Board to accept a sponsor in any future year.

(e) Upon accreditation a sponsor will be assigned a sponsor number and can represent that it is a Board accredited MET sponsor. An accredited sponsor shall include in promotional materials the following language: "We are accredited by the State Pension Review Board as a Minimum Educational Training (MET) sponsor for Texas public retirement systems. This accreditation does not constitute an endorsement by the Board as to the quality of our MET program."

(f) An accredited sponsor is not required to comply with provisions contained in §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Sponsors).

(g) The Board may accredit a sponsor to offer MET activities in the core content areas under §607.110(a) of this chapter (relating to

Minimum Educational Training Requirements), the non-core content areas under §607.110(b)(1) of this chapter, or both.

(h) An accredited sponsor shall be reviewed for renewal of accredited sponsor status after an initial two-year period of accreditation, and again after each subsequent four-year period of accreditation, or at such other times as the Board deems reasonable. To be considered for renewal, an accredited sponsor must submit a renewal application on a form provided by the Board. Review for renewal shall be based on the criteria stated in subsection (d) of this section.

(i) Complaints concerning accredited sponsors and MET activities may be directed to the Board. If the Board determines that a response is necessary from the sponsor, the sponsor shall be notified in writing and provided a copy of the complaint. The Board shall respond to all complaints within a reasonable time.

(j) The Board, in its sole and exclusive discretion, may determine that an accredited sponsor is not in compliance with the registration requirements, MET standards, or applicable Board rules. The Board will provide the accredited sponsor reasonable notice of such a determination and shall provide the accredited sponsor a reasonable opportunity to become compliant. If the Board determines the sponsor is not in compliance, the Board may require the sponsor to take corrective action and/or may terminate the sponsor's accreditation. A sponsor that has had its accreditation terminated or that has voluntarily surrendered its accreditation may apply for reinstatement no sooner than six months after the effective date of the termination or surrender.

(k) A sponsor that requests reinstatement may do so by submitting a completed application as required in subsection (c) of this section. The applicant will be subject to all the requirements of this section.

(l) Board decisions under this chapter are final and are not appealable. No portion of this chapter shall be interpreted or construed to create a right to a hearing, or to acknowledge or create any private right or interest.

§607.126. Obligations of Accredited Sponsors.

(a) In order to support the reports required of PRSs, a sponsor accredited under §607.124 of this chapter (relating to Sponsor Accreditation) shall retain the following records for five years following the date the program is completed:

(1) an agenda or outline that describes the course content;

(2) the name and title of each instructor for each topic;

(3) time devoted to each topic;

(4) each date and location of the presentation; and

(5) record of participation that reflects:

(A) the credit hours earned by each trustee and system administrator participant; and

(B) the number of non-trustee and non-administrator attendees.

(b) The accredited sponsor, upon request of the Board, shall immediately submit any of the records retained in subsection (a) of this section for review.

(c) An accredited sponsor shall at any reasonable time allow a member of the Board or Board staff, as part of a review of the sponsor, to inspect the sponsor's teaching facilities, examine the sponsor's records, attend its courses or seminars at no charge, and review its program to determine compliance with the sponsor accreditation requirements, MET standards, and all applicable Board rules.

(d) An accredited sponsor shall not use advertising that is false or misleading, or use any communication that, in the sponsor's effort to promote its services, is coercive.

(e) An accredited sponsor, promptly upon the conclusion of the activity, but not later than 30 calendar days after the conclusion activity, shall provide to each trustee or system administrator participant a certificate of completion, reflecting the following information:

- (1) Name of participant;
- (2) Activity title;
- (3) Date and location of the activity;
- (4) Total accredited MET hours; and
- (5) Sponsor name and contact information.

(f) An accredited sponsor shall include in each MET activity a process for participants and instructors to evaluate the quality of the activity, including whether:

- (1) Course Objectives were met;
- (2) Facilities and technology were satisfactory;
- (3) Each instructor was effective; and
- (4) Program content was timely and effective.

(g) Sponsors shall inform Instructors of the results of their performance evaluation in subsection (f) of this section, and should systematically review the evaluation process to ensure its effectiveness.

§607.128. Accreditation of MET Activities from Non-Accredited Sponsors.

(a) MET activities may be accredited, on a case-by-case basis, upon the written application of a sponsor or public retirement system on behalf of its own trustees or system administrator. All applications for accreditation of an MET activity by a non-accredited sponsor shall:

(1) be submitted at least 30 days in advance of the activity, although the Board, at its discretion, may approve applications filed less than 30 days in advance of the activity, or may approve applications filed after the activity, in exceptional cases;

- (2) be submitted on a form provided by the Board;
- (3) contain all information requested on the form;

(4) be accompanied by a sample agenda or course outline that describes the course content, designates the courses sought to be accredited as an MET activity, identifies the instructors, lists the time devoted to each topic, and shows each date and location at which the program will be offered; and

(5) include a detailed calculation of the total MET hours for the course and the hours that correspond to each core and non-core topic the course covers.

(b) A separate application is required for each activity unless the activity is being repeated in exactly the same format but on different dates and/or locations. Repeat presentations may be added to an existing application for a twelve month period following the effective date of accreditation.

(c) The Board shall review each application and notify the applicant of acceptance or rejection of the activity. An acceptance in any given year shall not bind the Board to accept a sponsor or activity in any future year.

§607.130. Accreditation of In-House Training Activities.

(a) MET activities provided by public retirement systems or their hired consultants primarily for the education of their trustees

and/or system administrators are considered in-house training, and may be accredited for MET credit. Education provided in-house must meet the standards in §607.120 of this chapter (relating to Program Standards for all Sponsors) and §607.122 of this chapter (relating to MET Credit Hour Computation for Sponsors).

(b) Public retirement systems that conduct in-house training may apply to become accredited sponsors under §607.124 of this chapter (relating to Sponsor Accreditation).

(c) Public retirement systems that conduct in-house training may submit individual courses for accreditation under §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Sponsors).

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

Filed with the Office of the Secretary of State on August 29, 2014.

TRD-201404146

Christopher Hanson

Executive Director

State Pension Review Board

Effective date: September 18, 2014

Proposal publication date: June 27, 2014

For further information, please call: (512) 463-1736



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §15.52

The Texas Department of Transportation (department) adopts amendments to §15.52, concerning agreements with local governments for highway improvement projects. The amendments to §15.52 are adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4632) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Currently, under the standard arrangement for a joint participation agreement between the department and a local government for a highway improvement project that is eligible for federal or state participation, the local government is responsible for a specified percentage of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way, as well as cost overruns, unless a special approval is given by the department. The amendments change the standard arrangement for a local government's responsibility from a specified percentage of project costs to a fixed amount determined at the time the agreement is executed, with cost overruns paid by the department. The amendments also expand the activities that a local government may provide under

a local participation highway improvement project and change the criteria that allow a local government to perform and manage a project.

Amendments to §15.52(3), Funding arrangement, change the standard funding arrangement from a specified percentage of project costs to a fixed price amount. The specified percentage arrangement remains available but requires executive director approval. These changes will better accommodate the budget processes for both the department and local governments and will reduce overall payment complexity.

Amendments to §15.52(3)(D), relating to projects funded under the Off-State Highway System Bridge Program, provide that the local government is responsible for a fixed price, based on a specified percentage of the associated costs instead of the current specified percentage. Section 15.52(3)(D) is further amended to provide that estimated direct costs used to establish the fixed price are based on the estimate of the eligible work at the time of the agreement. This addition provides clarity to the sentence. Further, amendments to §15.52(3)(D) provide that the local government is responsible for the "estimated" direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program. Finally, amendments to §15.52(3)(D) provide that the fixed price amount may be adjusted by an amendment to the agreement to reflect additional costs resulting from changes made at the request of the local government. These changes will better accommodate the budget processes for both the department and local governments and will reduce overall payment complexity.

Amendments to §15.52(6), Payment provision, reflect the changes made in §15.52(3), which change the standard arrangement from a specified percentage of project costs to a fixed price amount and retain the specified percentage arrangement as an alternative. Section 15.52(6)(B)(ii) contains language assigning the responsibility for paying cost overruns to local governments for the Specified Percentage. Section 15.52(6)(D), dealing with projects funded under the Off-State Highway System Bridge Program, is amended to delete the department's responsibility to notify the local government of any amount related to ineligible items because such a notification is not required under the fixed price arrangement applicable to those projects. The amendments delete the last sentence of §15.52(6)(D) relating to the return of excess funds paid by the local government because it is also unnecessary under the change to the fixed price arrangement.

Amendments to §15.52(8), Responsibilities of the parties, allow the local government to outsource preliminary project engineering and design, bid opening, award of construction to a contractor, and construction management by the local government or a consultant hired by a local government of an improvement project for which reimbursement is requested. Currently, the local government may only outsource preliminary project engineering and design if it sought reimbursement for those expenses. The amendments remove the necessity for requesting reimbursement for only engineering and design and make the request requirement applicable to all four items in this paragraph. Section 15.52(8)(A) is amended to allow the local government to contract for highway construction. Section 15.52(8)(C)(iv) is amended to clarify when a local government may perform and manage roadway projects on the state highway system and allows the executive director to reduce the threshold percentage below the specified 50 percent. Section 15.52(8)(D), Approval,

is amended to remove the prohibition on department approval of any project that includes the local government improving freeway mainlanes on the state highway system, and instead, require written approval of the executive director for such a project. The amendments require that, in determining whether to approve the local government's project management request, the department will evaluate the criteria specified in the subdivision rather than merely consider those criteria. These changes are proposed in order to improve on-time letting of projects and to enhance the evaluation process to ensure a local government is qualified to manage elements of project development.

Amendments to §15.52(10), Local Regulations, clarify that the local government must commit in a joint participation agreement to pay for all increased costs that result from existing, future, or proposed local ordinance, order, policy, directive, or change that is more restrictive than state or federal regulations regardless of funding arrangement used in the agreement.

COMMENTS

Comments were received from the City of Houston.

Comment: The proposed rule does not allow local government participation in the creation of an estimate of the eligible work.

Response: Allowing a local government to have the desired input would unnecessarily complicate the task and could lead to project delay. This rule change will operate to assist the local governments in budgeting for those projects with the department, not to make their burden more onerous. There is currently a process in place in Houston whereby the Houston District develops its estimate of costs based upon project information provided by the local government and the department's knowledge of federal and state laws that apply to the particular project.

Comment: The proposed rules do not allow for the return of "excess funds."

Response: The changing of the default payment arrangement from one of a specified percentage to a fixed price is a change that indicates that local governments are willing to agree to fixed amounts and give up the right to get some refunds in exchange for the added benefit of financial certainty. The previous rule would allow for refunds, but should the rule pass, they would not be. The city asks to have those parts restored. The department does not agree to that since it would be responsible for overruns if the rule is passed.

Comment: The commenter asks to have "refund" wording reinserted into §15.52(6)(D).

Response: The section at issue, regarding Off-State Highway System Bridge Program, falls under the Specified Percentage section now. It differs from the others in this section because excess local government money will be used in subsequent bridge replacement projects since work under this program is recurring. Excess funds are earmarked for other bridge projects, serving the noble purpose of safer state bridges.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

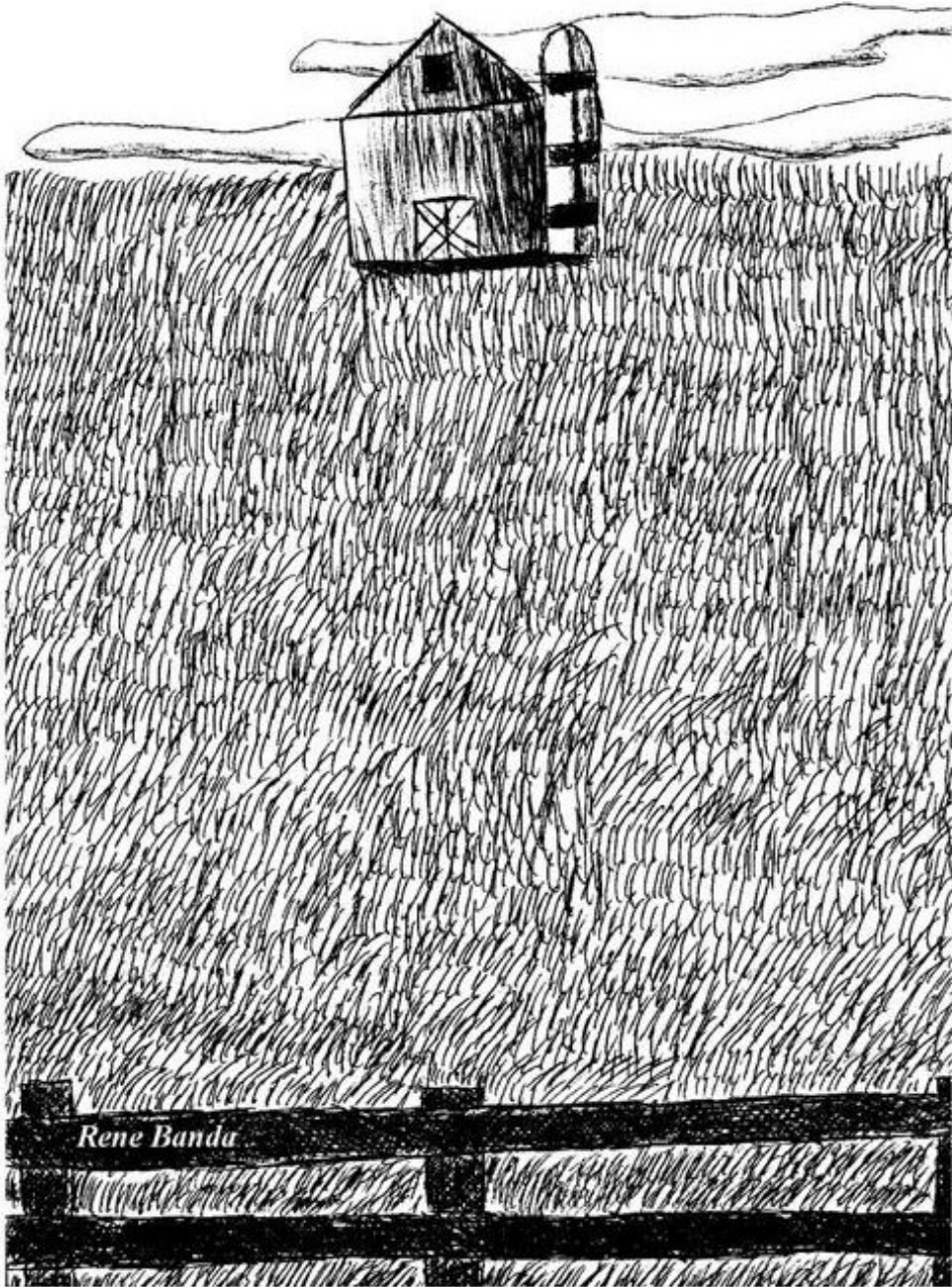
Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, §224.033.

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

Filed with the Office of the Secretary of State on August 29, 2014.
TRD-201404150

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: September 18, 2014
Proposal publication date: June 13, 2014
For further information, please call: (512) 463-8683





REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 17, Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards; Chapter 18, Tobacco Settlement Permanent Trust Account; Chapter 19, State Energy Conservation Office; and Chapter 20, Texas Procurement and Support Services. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*.

Comments pertaining to this review may be directed accordingly:

Chapter 17, Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards Tom Smelker, Director Treasury Operations 208 E. 10th Street, Suite 636, Austin, Texas 78701

Chapter 18, Tobacco Settlement Permanent Trust Account Marianne Dwight, General Counsel Texas Treasury Safekeeping Trust Company 208 E. 10th Street Austin, Texas 78701

Chapter 19, State Energy Conservation Office Dub Taylor, Director State Energy Conservation Office 111 East 17th Street, Room 1118, Austin, Texas 78774

Chapter 20, Texas Procurement and Support Services Ron Pigott, Director Texas Procurement and Support Services (TPASS) Division P.O. Box 13528, Austin, Texas 78711-3528

TRD-201404193

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: September 3, 2014



Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 216, §§216.1 - 216.3, 216.10 - 216.12, and 216.20 - 216.22, "Project Management Practices." The review and consideration of the rules are conducted in accordance

with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201404182

Martin H. Zelinsky

General Counsel

Department of Information Resources

Filed: August 29, 2014



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services; Subchapter BB, Commissioner's Rules Concerning State Plan for Educating English Language Learners; Subchapter DD, Commissioner's Rules Concerning High School Equivalency Programs; Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program; Subchapter GG, Commissioner's Rules Concerning Dropout Prevention Strategies; and Subchapter HH, Commissioner's Rules Concerning Education in a Juvenile Residential Facility, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 89, Subchapters AA, BB, DD, EE, GG, and HH, in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1939).

Relating to the review of 19 TAC Chapter 89, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received one comment related to the review of Subchapter AA. Following is a summary of the public comment received and the corresponding response.

Comment: A school district transition services coordinator commented that §89.1070, Graduation Requirements, requires revision to reflect movement toward the Foundation High School Program. The commenter further stated that it is essential that guidance be provided prior to the end of the 2013-2014 school year so that high school seniors who receive special education services have the same opportunity to graduate through 19 TAC §74.1022 as their peers not receiving special education services.

Agency Response: The agency agrees that §89.1070 must be amended to align with the new Foundation High School Program and has proposed an amendment to align this rule with the new graduation requirements. The agency disagrees with the comment that rules must be adopted prior to the end of the school year because students who were permitted to graduate under the Foundation High School Program in the 2013-2014 school year did not have the option of graduating with an endorsement. The proposed revisions to 19 TAC Chapter 89, Subchapter AA, including the amendment to §89.1070, may be found in the Proposed Rules section of the June 13, 2014, issue of the *Texas Register* (39 TexReg 4571).

Relating to the review of 19 TAC Chapter 89, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received comments related to the review of Subchapter BB. Following is a summary of the public comments received and the corresponding responses.

Comment: The Texas Charter School Association (TCSA) commented that, for charter districts that have campuses located more than 15 minutes apart, §89.1205, Required Bilingual Education and English as a Second Language Programs, should provide an exemption to the requirement of offering a bilingual education program if the charter has an enrollment of 20 or more English language learners in any language classification in the same grade level district-wide or that campuses should be considered as separate districts for the purposes of calculating the number of English language learners related to this requirement.

Agency Response: The agency disagrees. The language in §89.1205(a) is consistent with the rule's authorizing statute, Texas Education Code (TEC), §29.053(c).

Comment: Relating to §89.1207, Exceptions and Waivers, the TCSA commented on the requirement to reduce the number of teachers under exception by 25% for bilingual Spanish programs when compared to the number of exceptions granted the previous year. The TCSA suggested the agency include a lower percentage for charter schools because charter school teachers most often are employed on an at-will basis and not under the compulsion of an employment contract as in traditional school districts, which results in higher teacher turnover rates.

Agency Response: The agency disagrees. All districts and charter schools are held to the same expectation regardless of the unique challenges that might be faced by a given district or charter school, including size, geographic location, or teacher turnover rates.

Comment: The TCSA commented that the requirements in §89.1220, Language Proficiency Assessment Committee, to establish and operate a sufficient number of language proficiency assessment committees and the requirement in §89.1225, Testing and Classification of Students, to administer the required oral language proficiency test and norm-referenced standardized achievement instrument should be changed from within 20 school days to 30 school days.

Agency Response: The agency disagrees. The language in §89.1220 and §89.1225 is consistent with the rules' authorizing statutes, TEC, §29.053(b) and §29.056(a)(1).

Comment: Relating to §89.1250, Required Summer School Programs, the TCSA commented that the commissioner should create an explicit

exemption from summer programming for charter districts that do not offer prekindergarten programs.

Agency Response: The agency disagrees. The language in §89.1250 is consistent with the rule's authorizing statute, TEC, §29.060.

No changes to Subchapter BB are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 89, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter DD. At a later date, the TEA may propose changes to Subchapter DD to reflect possible changes to the administration of the high school equivalency examination and make technical edits such as updating state agency names.

Relating to the review of 19 TAC Chapter 89, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter EE. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 89, Subchapter GG, the TEA finds that the reasons for adopting Subchapter GG continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter GG. At a later date, the TEA plans to propose an amendment to §89.1701, Dropout Prevention Strategy Plan, to align terminology with statute and update references to the TEC.

Relating to the review of 19 TAC Chapter 89, Subchapter HH, the TEA finds that the reasons for adopting Subchapter HH continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter HH. At a later date, the TEA plans to propose an amendment to §89.1801, Instructional Requirements for Education Services Provided in a Juvenile Residential Facility, to reflect changes to curriculum requirements made by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

The rules in Subchapter CC, Commissioner's Rules Concerning Adult and Community Education, are not subject to rule review since the rules were repealed due to Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013, which transferred all functions, duties, appropriations, and responsibilities for state and federal adult education and literacy programs from the TEA to the Texas Workforce Commission.

This concludes the review of 19 TAC Chapter 89.

TRD-201404195

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: September 3, 2014



Texas State Board of Pharmacy

Title 22, Part 15

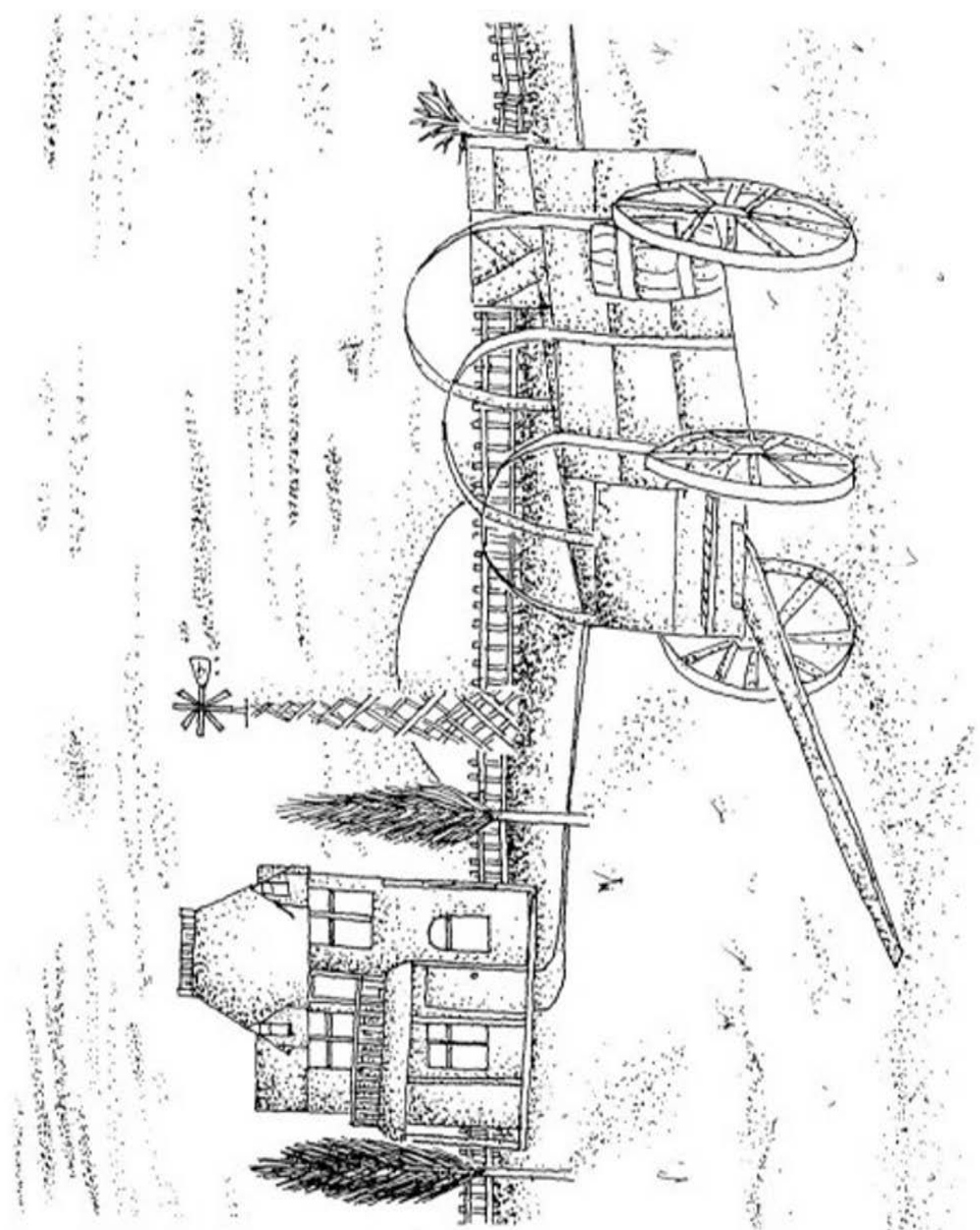
The Texas State Board of Pharmacy adopts the review of Chapter 281 (§§281.1 - 281.13, 281.15, 281.17 - 281.23, 281.30 - 281.34, and 281.60 - 281.68), concerning Administrative Practice and Procedures, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

The proposed notice of rule review was published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4687). No comments were received. The agency finds the reason for adopting the rules continues to exist.

TRD-201404139

Gay Dodson, R.Ph
Executive Director
Texas State Board of Pharmacy
Filed: August 28, 2014





IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: County Hog Out Management Program

Statement of Purpose. The Texas Department of Agriculture (TDA) is requesting applications for the County Hog Out Management Program (Program). The Program is designed to encourage counties across the State of Texas to make a concentrated and coordinated effort to reduce the feral hog population and the damage caused by these animals during the three-month period of September 1, 2014 through November 30, 2014, and propose activities to continue abatement throughout the year. This Request for Applications sets forth Program requirements and procedures.

Current abatement methods in Texas vary depending on the geographic terrain and vegetation. TDA believes landowners and local constituents know the surrounding land and waterways, as well as the potential challenges to combating feral hogs. Through this program, the highest ranking counties will receive assistance to continue local activities which may range from educating the landowners on abatement methods, coordinating trapping and hunting programs, to conducting aerial gunning and addressing public safety hazards related to feral hogs.

Eligibility. To be eligible for an award under the Program, the applicant must be a Texas county. The county must have or develop a method to accurately track the number of feral hogs taken in the county during the period of September 1, 2014 through November 30, 2014.

Counties that have received, or are currently receiving, grant funds from TDA for feral hog abatement are eligible to receive another award in 2014; however, results submitted in the application must not be funded by a TDA grant or related matching funds, if applicable.

Funding Parameters. TDA will make awards after all applications are processed. Grant funds will be available on a cost reimbursement basis for county use on feral hog abatement expenditures during the grant term. A total of \$90,000 is available for this funding opportunity. TDA anticipates making 8 awards ranging from \$20,000 to \$5,000 each.

To be eligible to receive grant funds, counties that are awarded Program grants must enter into a grant agreement with TDA. Grant funds will be distributed on a reimbursement basis after awarded counties submit proof of allowable expenditures.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this Program, applicants will be informed accordingly.

Application Requirements and Deadline for Submission of Responses. Application and information can be downloaded from the "Grants Office" section under the "Grants and Services" tab at www.TexasAgriculture.gov.

The complete application packet (including application form GTBD-131) with signatures must be **RECEIVED by 5:00 p.m. (Central Time) on Monday, December 15, 2014**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to

ensure timely delivery. *Late or incomplete proposals will not be accepted.*

TDA will send an acknowledgement receipt by e-mail indicating the application was received.

Contact Information.

Complete application with signature must be submitted to:

Physical Address: Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Electronic Versions: E-mail: Grants@TexasAgriculture.gov; Fax: (888) 223-9048.

For questions regarding submission of the application and/or TDA requirements, please contact TDA at (512) 463-6908, or by e-mail at Grants@TexasAgriculture.gov.

TRD-201404137

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: August 28, 2014

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/08/14 - 09/14/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/08/14 - 09/14/14 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 09/01/14 - 09/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 09/01/14 - 09/30/14 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201404197

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 3, 2014

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Office of Court Administration

Senate Bill 1908 Report

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the report is not included in the print version of the Texas Register. The report is available in the on-line version of the September 12, 2014, issue of the Texas Register.)

Texas Government Code §72.031 required the Office of Court Administration (OCA) to:

- * Conduct a study on court fees and costs that identifies each statutory law imposing a court fee or cost in a court in this state;
- * Determine whether each identified fee or cost is necessary to accomplish the stated statutory purpose;
- * Compile a list of the identified fees and costs and of each fee or cost the office determines is necessary;
- * Publish the list on the [OCA] Internet website and in the *Texas Register*; and
- * Provide a copy of the list and determinations to the governor, lieutenant governor, and speaker of the house of representatives.

In addition to extensive study by OCA staff, OCA convened a group of local government representatives to provide consultation regarding the study. Based on the analysis of the information collected during the study OCA recommends the repeal of the following four fees and costs that are not necessary to accomplish their stated purpose: 1) Fee for an Additional Petition for Review of An Appraisal Board Order, 2) County Attorney's Fee in Certain Suits Against a Railroad Company, 3) Fee for Hearing an Application to Secure a Pension, and 4) Special Harris County Justice Court Cost.

OCA also identified the following issues during the study that it recommends be reviewed by the Texas Legislature: 1) court fees and costs that have an unclear statutory purpose, 2) court fees and costs that are used to fund programs outside of and unrelated to the judiciary, and 3) the practice of depositing court fees and costs into the general fund to be appropriated at the discretion of the funding body, rather than restricting the use of or utilizing dedicated accounts for court fees and costs dedicated to a specified purpose.

A copy of the full report and identified costs and fees is available from OCA's website at: <http://www.txcourts.gov/oca/pdf/SB1908-Report-FINAL.pdf>

TRD-201404199

Maria Elena Ramon

General Counsel

Office of Court Administration

Filed: September 3, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the op-

portunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 13, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 13, 2014**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: ANJIA GOLDEN, INCORPORATED dba Onion Creek Food Mart; DOCKET NUMBER: 2014-0762-PST-E; IDENTIFIER: RN102260320; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$12,475; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Cherry Crushed Concrete, Incorporated; DOCKET NUMBER: 2014-0970-MLM-E; IDENTIFIER: RN106953904; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: sand stabilization plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §106.146(2) and §116.110(a)(4), and Texas Health and Safety Code, §382.085(b), by failing to have top covers on conveyor belts transferring dry material to the pug mill; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Baird; DOCKET NUMBER: 2014-0813-MWD-E; IDENTIFIER: RN101720969; LOCATION: Baird, Callahan County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010037001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Raymond

Mejia, (512) 239-5460; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Big Lake; DOCKET NUMBER: 2014-0825-MSW-E; IDENTIFIER: RN102328176; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: municipal solid waste (MSW) landfill; RULES VIOLATED: 30 TAC §330.137, MSW Permit Number 86B and Site Operating Plan (SOP) Section IV.4.9 Site Sign, by failing to display all required information on site sign at the facility entrance; 30 TAC §330.139, MSW Permit Number 86B and SOP Section IV.4.10 Control of Windblown Waste and Litter, by failing to maintain and operate the working face in a manner to control windblown solid waste; 30 TAC §330.305(b) and (c), MSW Permit Number 86B and SOP Section IV.4.23 Landfill Cover, by failing to design, construct and maintain a run-on control system and a run-off management system capable of preventing flow onto or from the active portions of the landfill; and 30 TAC §330.165(a), MSW Permit Number 86B and SOP Section IV.4.23 Landfill Cover, by failing to provide adequate daily cover; PENALTY: \$4,975; ENFORCEMENT COORDINATOR: Allyson Plantz, (512) 239-4593; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: City of O'Brien; DOCKET NUMBER: 2014-0601-PWS-E; IDENTIFIER: RN101386852; LOCATION: O'Brien, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$864; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: CONCAN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0786-PWS-E; IDENTIFIER: RN101227452; LOCATION: Concan, Uvalde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §§290.106(c)(4) and (e), 290.107(c)(1) and (e) and 290.108(c)(1) and (e), by failing to collect the triennial cyanide, minerals, metals, synthetic organic chemical contaminants, and radionuclide samples and provide the results to the executive director; 30 TAC §290.106(c)(6) and (e) and §290.107(c)(2) and (e), by failing to collect annual nitrate and volatile organic chemical contaminant samples and provide to the executive director; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: \$2,205; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Dean L. Bolen; DOCKET NUMBER: 2014-1180-WOC-E; IDENTIFIER: RN106753249; LOCATION: Amherst, Lamb County; TYPE OF FACILITY: wastewater; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: Envoy Air Incorporated (formerly known as AMERICAN EAGLE AIRLINES, INCORPORATED); DOCKET NUMBER: 2014-0600-WQ-E; IDENTIFIER: RN102993144; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: de-icing pad; RULE VIOLATED: TWC, §26.121(a), by failing to prevent an unauthorized discharge of de-icing fluid from aircraft de-icing activities into water in the state; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: HUNZA (U.S.A.), INCORPORATED dba East Hill Deli & Grocery; DOCKET NUMBER: 2013-0748-PST-E; IDENTIFIER: RN103036265; LOCATION: Frankston, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,505; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2014-0285-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit (FOP) Number O1897, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 21, TCEQ Air Permit Numbers 1302 and PSDTX1085, Special Conditions (SC) Number 22.E., and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records of calculated total nitrogen oxides emissions from all emission sources for the previous calendar month and the previous consecutive 12-month period; 30 TAC §§101.20(3), 116.115(b)(2)(E)(i) and (c), and 122.143(4), FOP Number O1897, GTC and STC Numbers 1.A. and 21, TCEQ Air Permit Numbers 1302 and PSDTX1085, SC Number 14.B., and THSC, §382.085(b), by failing to maintain an emissions record which includes calculated emissions of volatile organic compounds from all storage tanks during the previous calendar month and the past consecutive 12-month period; 30 TAC §§101.20(3), 116.115(c), 116.116(a)(1), and 122.143(4), FOP Number O1897, GTC and STC Number 21, TCEQ Air Permit Numbers 1302 and PSDTX1085, SC Number 14, and THSC, §382.085(b), by failing to comply with permit representations for the maximum fill rates for multiple storage tanks in the adiponitrile unit; 30 TAC §§101.20(3), 116.115(c), 116.116(a), and 122.143(4), FOP Number O1897, GTC and STC Number 21, TCEQ Air Permit Numbers 1302 and PSDTX1085, SC Number 1, and THSC, §382.085(b), by failing to comply with permit representations; and 30 TAC §§101.20(1) and (3), 115.112(a)(3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(3)(ii), FOP Number O1897, GTC and STC Numbers 1.A. and 21, TCEQ Air Permit Numbers 1302 and PSDTX1085, SC Number 9.A., and THSC, §382.085(b), by failing to comply with minimum net heating value requirements; PENALTY: \$99,938; Supplemental Environmental Project offset amount of \$39,975 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: JMH Homes-Houston, LLC; DOCKET NUMBER: 2014-0638-MWD-E; IDENTIFIER: RN101523264; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014987001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$27,500; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Justin Vargas; DOCKET NUMBER: 2014-1179-WOC-E; IDENTIFIER: RN107378721; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: wastewater; RULES VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR:

Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: KB MARINE INDUSTRY, LLC; DOCKET NUMBER: 2014-0713-WQ-E; IDENTIFIER: RN106905193; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: ship-breaking industrial site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit TXR0500000; PENALTY: \$2,375; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5406; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Nuevo Midstream, LLC; DOCKET NUMBER: 2014-0966-AIR-E; IDENTIFIER: RN101968550; LOCATION: Orla, Reeves County; TYPE OF FACILITY: natural gas compression site; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3537/Oil and Gas General Operating Permit Number 514, Site-wide Requirements (b)(2), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(15) COMPANY: Randolph Water Supply Corporation; DOCKET NUMBER: 2013-2206-MWD-E; IDENTIFIER: RN102915469; LOCATION: Randolph, Fannin County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014752001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$11,987; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: RECON SERVICES, INCORPORATED dba Recon Recycles; DOCKET NUMBER: 2014-0433-MSW-E; IDENTIFIER: RN103006607; LOCATION: Del Valle, Travis County; TYPE OF FACILITY: recycling; RULES VIOLATED: 30 TAC §328.5(c) and (f)(3), by failing to provide adequate financial assurance to cover all closure costs for storing combustible materials outdoors; PENALTY: \$18,771; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: SIFCO Applied Surface Concepts, LLC; DOCKET NUMBER: 2013-2073-IHW-E; IDENTIFIER: RN104964929; LOCATION: Houston, Harris County; TYPE OF FACILITY: electroplating processing facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of industrial hazardous waste (IHW) at an unauthorized facility; 30 TAC §335.69(a) and 40 Code of Federal Regulations (CFR) §262.34(a), by failing to transfer hazardous waste off-site within the allotted accumulation time limit for IHW generators; and 30 TAC §335.10 and 40 CFR §262.20(a)(1), by failing to manifest IHW from waste stream Number WS0001114H on a uniform hazardous waste manifest; PENALTY: \$118,672; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: STILLWATER CUSTOM HOMES, LIMITED; DOCKET NUMBER: 2014-0809-WQ-E; IDENTIFIER: RN107276347; LOCATION: Belton, Bell County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated

with construction activities; PENALTY: \$3,989; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: TRS Construction, Incorporated; DOCKET NUMBER: 2014-0807-WQ-E; IDENTIFIER: RN107249500; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: U & Z Incorporated dba Westchester Food Mart; DOCKET NUMBER: 2014-0726-PST-E; IDENTIFIER: RN102408978; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: V A K ENTERPRISES, INCORPORATED dba Grab-N-Go; DOCKET NUMBER: 2014-0917-PST-E; IDENTIFIER: RN101432011; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$1,736; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: West Park Municipal Utility District; DOCKET NUMBER: 2014-0592-PWS-E; IDENTIFIER: RN101276582; LOCATION: Houston, Harris County; TYPE OF FACILITY: municipal utility; RULES VIOLATED: 30 TAC §290.108(f)(1) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picocuries per liter for gross alpha particle activity, based on the running annual average; PENALTY: \$187; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INCORPORATED; DOCKET NUMBER: 2013-1998-MLM-E; IDENTIFIERS: RN106886443 (Site 1), RN105209175 (Site 2) and RN105209183 (Site 3); LOCATION: Kingsland, Llano County (Site 1); Round Rock and Austin (Site 2), Travis County (Site 3); TYPE OF FACILITY: aggregate production sand and gravel extraction and recycling operations; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code §382.0518(a) and §382.085(b), by failing to obtain authorization for a new source review permit prior to operation of a new or existing facility which may emit air contaminants into the air (Site 1); 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000 (Site 1, Site 2, and Site 3); 30 TAC §342.25, by failing to register the facility as an aggregate production operation by June 30, 2013 (Site 1); 30 TAC §328.5(f)(3), by failing to demonstrate proof of financial assurance sufficient to cover all closure costs (Site 2 and Site 3); 30 TAC §328.5(c), by failing to provide a written cost estimate showing

the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials (Site 2 and Site 3); PENALTY: \$21,768; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201404187

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 2, 2014



Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 13, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 13, 2014**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Myra Anum Enterprises Inc d/b/a OBS Mart; DOCKET NUMBER: 2013-0688-PST-E; TCEQ ID NUMBER: RN102225299; LOCATION: 304 East Front Street, Hawkins, Wood County; TYPE OF FACILITY: UST system and convenience store

with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,879; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201404184

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 2, 2014



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 13, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 13, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ASHISH AND ANNA INC d/b/a Hamshire Quick Mart; DOCKET NUMBER: 2014-0278-PST-E; TCEQ ID NUMBER: RN106200439; LOCATION: 24061 State Highway 73, Winnie, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(3) and (6), by failing to provide a pre-test notification to the appropriate TCEQ regional office at least ten working days in advance of an annual Stage II system test, and by failing to submit

the Stage II system test results to the TCEQ regional office within ten days of completion of the system test; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$4,142; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: HD Recycling, LLC; DOCKET NUMBER: 2013-0208-WQ-E; TCEQ ID NUMBER: RN106327521; LOCATION: 105 Dennis Road, Weatherford, Parker County; TYPE OF FACILITY: waste processing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: \$6,250; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Matus Construction Group, LLC; DOCKET NUMBER: 2013-1950-WQ-E; TCEQ ID NUMBER: RN106104052; LOCATION: 3100 Stallion Drive, Robinson, McLennan County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR15RQ27, Part III, Section F.2(c)(i)(B), by failing to install minimum sediment controls for all down slope boundaries at the site, which resulted in an unauthorized discharge; and 30 TAC §305.125(1) and TPDES GP Number TXR15RQ27, Part III, Section F.2(a)(iii), by failing to have adequate controls in place to minimize the offsite transport of litter, construction debris, and construction material; PENALTY: \$2,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: MISSION PETROLEUM CARRIERS, INC.; DOCKET NUMBER: 2013-1984-PST-E; TCEQ ID NUMBER: RN105488548; LOCATION: 25065 North Farm-to-Market Road 509, Harlingen, Cameron County; TYPE OF FACILITY: common carrier who physically delivers regulated substances into underground storage tanks (USTs) directly from a cargo tank which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge); RULES VIOLATED: TWC, §26.3467(d) and 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into a regulated UST system that was not covered by a valid and current TCEQ delivery certificate; PENALTY: \$13,859; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: PROTON PRC, LTD. d/b/a Texoma Beverages and d/b/a C Store 122; DOCKET NUMBER: 2013-1146-PST-E; TCEQ ID NUMBER: RN103059218 (Facility 1) and RN103757621 (Facility 2); LOCATION: 3714 State Highway 91 North, Denison, Grayson County (Facility 1) and 5018 South State Highway 91, Denison, Grayson County (Facility 2); TYPE OF FACILITY: underground storage tank (UST) systems at two convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release

detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness test (Facility 1); TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system (Facility 1 and Facility 2); TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system by failing to perform monthly statistical inventory reconciliation and failing to perform the annual line leak detector test (Facility 2); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel (Facility 2); PENALTY: \$14,883; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Sienna Mulch, Inc.; DOCKET NUMBER: 2013-1135-MSW-E; TCEQ ID NUMBER: RN104298302; LOCATION: 9615 Farm-to-Market Road 521, Rosharon, Fort Bend County; TYPE OF FACILITY: wood recycling facility; RULES VIOLATED: 30 TAC §328.5(d) and §332.3(d)(3), by failing to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors; 30 TAC §§328.4(b)(3), 328.5(f)(1), and 332.3(d)(3), by failing to recycle during each subsequent six-month period at least 50% by weight or volume of material accumulated at the facility for recycling or transfer to a different site for recycling; and 30 TAC §328.5(b)(4) and §332.3(d)(3), by failing to report any updates or changes to information contained in the site report within 90 days of the effective date of the change; PENALTY: \$24,987; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201404185

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 2, 2014



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 13, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders

and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 13, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: James Travis Lowman; DOCKET NUMBER: 2013-2082-MLM-E; TCEQ ID NUMBER: RN106552219; LOCATION: 4104 Nimrod Circle, Robstown, Nueces County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201 by failing to comply with the general prohibition on outdoor burning; PENALTY: \$5,323; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: QUICK PAY ENTERPRISES, INC.; DOCKET NUMBER: 2013-1319-PST-E; TCEQ ID NUMBER: RN101830305; LOCATION: 3401 Pleasanton Road, San Antonio, Bexar County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with upgrade requirements; PENALTY: \$15,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201404186
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 2, 2014



Notice of Water Quality Applications

The following notices were issued on August 22, 2014 through August 29, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF HOUSTON has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010495075,

which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,140,000 gallons per day. The facility is located at 11700 Sagearbor Drive, Houston, approximately 0.25 mile south of the intersection of Sageville Drive and South Belt Drive and approximately 0.5 mile west of Interstate Highway 45 in southeast Houston in Harris County, Texas 77089.

NICKIE JOE SUBLETT for a Major Amendment of TPDES Permit No. WQ0004858000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to increase the drainage area for Retention Control Structure #1 and Retention Control Structure #2, and reduce the total land application area from 928 acres to 907 acres. The currently authorized maximum capacity of 2,000 head, of which 2,000 head are milking cows, remains unchanged. The facility is located on the south side of Farm-to-Market Road 219, approximately 1 mile east of the intersection of Farm-to-Market Road 219 and U.S. Highway 281 in Hamilton County, Texas.

CITY OF TEMPLE has applied for a renewal of TPDES Permit No. WQ0010470002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,500,000 gallons per day. The facility is located at 2515 East Avenue H, on the west side of State Highway Loop 363, approximately one mile south of the intersection of State Highway 53 and State Highway Loop 363, Temple in Bell County, Texas 76501. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program.

ASARCO LLC P.O. Box 30200, Amarillo, Texas 79120, which operates the Amarillo Copper Refinery, a nonferrous metals refinery producing copper, silver, gold, selenium, tellurium, and nickel sulfate, has applied for a major amendment to, and renewal of, TPDES Permit No. WQ0001978000 to authorize the removal of Other Requirement No. 5 allowing process wastewater to be managed in Pond #6 and the removal of Other Requirement No. 6 requiring stormwater runoff sampling at seven locations within the plant's boundaries (points 1-5, 9, and 10). The current permit authorizes the discharge of stormwater runoff and sand filter backwash at an intermittent and flow-variable basis via Outfall 001 and the disposal of treated domestic wastewater and stormwater via irrigation of 10 acres of on-site land. The facility is located at 7001 State Highway 136, at the intersection of State Highway 136 and Folsom Road, approximately eight miles northeast of the City of Amarillo, Potter County, Texas 79108.

EQUISTAR CHEMICALS LP AND LYONDELLBASELL ACETYLs LLC which operate Lyondell-Basell La Porte Complex, have applied for a major amendment with renewal to TPDES permit No. WQ0004013000 to authorize combining TPDES permit No. WQ0000534000 with TPDES permit No. WQ0004013000 and to make the following additional changes to TPDES permit No. WQ0004013000: 1) add new Outfall 007 to discharge treated process wastewater, utility wastewaters, previously monitored effluent (treated domestic wastewater from internal Outfalls 701, 702, 703, and 704), hydrostatic test water, and stormwater at a daily average flow not to exceed 1,000,000 gallons per day; 2) add new Outfall 008 to discharge decanted water from bio-solids and stormwater on an intermittent and flow-variable basis; 3) add new internal Outfalls 701, 702, 703, and 704 to discharge treated domestic wastewater; 4) increase the daily average flow via Outfall 001 from 1,920,000 gallons per day to 1,970,000 gallons per day during the Interim Phase, which begins upon the date of permit issuance and lasts until the start-up of, or discharge from, processing unit LB-1; 5) make any technology-based categorical effluent limitations less stringent (as appropriate) at Outfall 001, based on the increase in production and the subsequent increase in the daily average flow from 1,920,000 gallons per day to 1,970,000 gallons per day during the Interim Phase at Outfall 001; 6) increase

the daily average flow via Outfall 001 from 1,970,000 gallons per day to 2,600,000 gallons per day during the Final Phase which begins upon the start-up of or discharge from, processing unit LB-1; 7) make any technology-based categorical effluent limitations less stringent (as appropriate) at Outfall 001, based on the increase in production and the subsequent increase in the daily average flow from 1,970,000 gallons per day to 2,600,000 gallons per day during the Final Phase at Outfall 001; 8) reduce the daily average flow limitation at Outfall 004 from 1,811,000 gallons per day to 1,500,000 gallons per day; 9) add internal Outfall 105 to monitor untreated post first-flush process area stormwater, utility wastewater, and previously monitored effluent (treated domestic wastewater via internal Outfall 104) at an intermittent and variable flow rate; and 10) add discharges of previously monitored effluent via internal Outfall 105 at an intermittent and variable flow via Outfall 005. Other changes to TPDES permit No. WQ0004013000 include the following: less stringent water quality-based mass effluent limitations for total aluminum, total copper, total zinc, and phenanthrene were placed at Outfall 001, during the Interim Phase; less stringent water quality-based mass effluent limitations for total aluminum, total copper, total zinc, acrylonitrile, carbon tetrachloride, nitrobenzene, and phenanthrene were placed at Outfall 001, during the Final Phase; and less stringent water quality-based mass effluent limitations for total copper, total zinc, and phenanthrene were placed at Outfall 007 TPDES permit No. WQ0004013000 currently authorizes discharges of the following: process wastewater, utility wastewater, previously monitored effluent (treated domestic wastewater monitored at internal Outfalls 101 and 201), hydrostatic test water, fire system test water, service water, potable water, construction stormwater, demineralized water, steam condensate, de minimus spill clean-up water, and stormwater at a daily average flow not to exceed 1,920,000 gallons per day via Outfall 001; process wastewater, utility wastewater, previously monitored effluent (treated domestic wastewater monitored at internal Outfalls 101 and 201), hydrostatic test water, fire system test water, service water, potable water, construction stormwater, demineralized water, steam condensate, de minimus spill clean-up water, and stormwater on an intermittent and flow-variable basis via Outfall 003; treated process water, utility wastewater, previously monitored effluent (treated domestic wastewater monitored at internal Outfall 104), hydrostatic test water, service water, demineralized water, de minimus spill clean-up water, steam condensate, and stormwater at a daily average flow not to exceed 1,811,000 gallons per day via Outfall 004; stormwater, groundwater infiltration (continuous flow), raw water, fire system test water, wastewaters from Decene Terminal, hydrostatic test water, potable water, demineralized water, steam condensate, and de minimus spill clean-up water on an intermittent and flow-variable basis via Outfall 005; and stormwater, raw water, fire system test water, hydrostatic test water, service water, potable water, construction stormwater, demineralized water, steam condensate, and de minimus spill clean-up water on an intermittent and flow-variable basis via Outfall 006. TPDES permit No. WQ0000534000 currently authorizes discharges of the following: treated process wastewater, utility wastewaters, previously monitored effluent (sanitary wastewater via Outfalls 101, 201, 301, and 401), and storm water at a Daily Average flow not to exceed 90,000 gallons per day via Outfall 001 and storm water from the land-farm area at an intermittent and variable flow via Outfall 002. The facility is located at 1515 Miller Cut-Off Road, approximately one mile north of the intersection of Miller Cut-off Road and State Highway 225, La Porte, Harris County, Texas 77571. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

TEXAMERICAS CENTER which operates the Ronald R. Collins Water Reclamation Facility, has applied for a major amendment to TPDES Permit No. WQ0004664000 to authorize the discharge of industrial wastewater from the metals/phosphate treatment system via Outfall 001 at a daily average flow not to exceed 1,500,000 gallons per day and to remove Outfall 002 from the permit. The existing permit authorizes the discharge of combined wastewater (domestic and industrial waste) from sewer Plant "X" at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001 and industrial wastewater from the metals/phosphate treatment facility at a daily average flow not to exceed 800,000 gallons per day via Outfall 002. The facility is located 2.4 miles south of the intersection of Bowie Parkway and U.S. Highway 82 and approximately 10 miles east of New Boston, Bowie County, Texas 75561.

CITY OF BASTROP has applied for a renewal of TPDES Permit No. WQ0011076002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located 1.5 miles south of the State Highway 71 and State Highway 304 intersection on the north bank of the confluence of Spring Branch and the Colorado River in Bastrop County, Texas 78602.

CITY OF ROPESVILLE has applied for a renewal of TCEQ Permit No. WQ0011150001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day via surface irrigation of 19 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located immediately east of U.S. Highway 62 and approximately one mile southwest of the intersection of State Highway 62 and Farm-to-Market Road 41, Ropesville in Hockley County, Texas 79358.

CITY OF BELLEVUE has applied for a new permit, proposed TPDES Permit No. WQ0011235004, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 33,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0011235003 which expired December 1, 2013. The facility is located at 428 Farm-to-Market Road 1288 North, due north of Bellevue, approximately 500 feet east of Farm-to-Market Road 1288 and 0.35 mile north of the intersection of U.S. Highway 287 and Farm-to-Market Road 1288 in Clay County, Texas 76228.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0011238002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 11538 Trickey Road near the intersection of Trickey Road and Harris County Flood Control Ditch No. P147-00-00 and approximately 1,600 feet north of Gears Road, and 1.5 miles west of Interstate Highway 45, north of the City of Houston in Harris County, Texas 77067.

NEWPORT MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011329001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 1501 South Diamondhead Boulevard, west of the confluence of Gum Gully and Jackson Bayou, approximately 1.8 miles northwest of the intersection of Farm-to-Market Road 2100 and U.S. Highway 90 in Harris County, Texas 77532.

SWWC UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0011931001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 16600 Edgemere Drive, Pflugerville, in Travis County, Texas 78660.

TEXAS H2O INC has applied for a renewal of TPDES Permit No. WQ0013025001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 1,700 feet northeast of the intersection of Hood County Road 311-A and Farm-to-Market Road 3210 southeast of the City of Granbury in Hood County, Texas 76048.

ROVING MEADOWS UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0013084001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,600 feet northwest of the intersection of Aldine-Westfield Road and Hartwick Road and approximately 2,300 feet south of Halls Bayou in Harris County, Texas 77093.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 433 has applied for a major amendment to TPDES Permit No. WQ0014954001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2.3 miles south and 2.4 miles west of the intersection of U.S. Highway 290 and Barker-Cypress Road in Harris County, Texas 77095.

FOREST WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015234001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 16,000 gallons per day. The facility will be located 3,900 feet west from the intersection of Farm-to-Market Road 1911 and U.S. Highway 69, in Cherokee County, Texas 75976.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1 (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1 (800) 687-4040.

TRD-201404192

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 3, 2014



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2014 for Candidates and Officeholders

Chester Daniel Anderson, 1700 Storey Ave., Midland, Texas 79701

Mark H. Benavides, 5656 Pan Am Expy. S., Ste. E, San Antonio, Texas 78211

Beatriz Berry, 3235 Single Peak, San Antonio, Texas 78261

Michael Binkley, 2918 Daisy Ct., Garland, Texas 75040

Andy M. Chatham, 9804 Spirehaven Ln., Dallas, Texas 75238

Norma P. Chavez, 824 Bolivia St., El Paso, Texas 79903

Derek A. Cooper, 1601 Lynnhaven Rd., Fort Worth, Texas 76103

Tony Cunningham, 2046 E. Crockett St., San Antonio, Texas 78202

William Scott Golemon, Sr., 100 IH 35 N., Ste. 600, Conroe, Texas 77301

Demetra Jefferson-Wysinger, 10925 Estate Ln., Ste. 305B, Dallas, Texas 75238

Irene R. Johnson, 313 Lake Creek Cir., Round Rock, Texas 78664

Damian LaCroix, P.O. Box 66185, Houston, Texas 77266

Davey O. Lamb, P.O. Box 596244, Dallas, Texas 75359

Brandin Lea, 2220 E. Victory Dr., Apt. 11, Savannah, Georgia 31404

David M. Medina, 1420 W. Hopkins St., Apt. A, San Marcos, Texas 78666

Ben E. Mendoza, 3330 Nashville Ave., El Paso, Texas 79930

Andrea A. Mendiola, 2223 W. Gramercy Pl., San Antonio, Texas 78201

James E. Millan, 816 Camaron St., Ste. 1.15, San Antonio, Texas 78212

Elaine H. Palmer, P.O. Box 131392, Houston, Texas 77219

David Palmquist, 561 Upper Elgin River Rd., Elgin, Texas 78621

Patrick L. Peavy, 2301 Pebble Vale Dr., Apt. 1725, Plano, Texas 75075

Brett H. Pritchard, 3907 Antelope Trl., Temple, Texas 76504

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248

Frederick Harrison Stralow, 115 Brett Dr., Gun Barrel City, Texas 75156

Edward R. Tidwell, 20573 Highland Lake Dr., Lago Vista, Texas 78645

Felecia L. Whatley, 6157 Skylark Ln., Watauga, Texas 76148

Deadline: Semiannual Report due July 15, 2014 for Committees

Jeffrey D. Barker, Lufkin Fire Fighters Committee for Responsible Government, P.O. Box 700, Lufkin, Texas 75902

Somiya Bhatnagar, P.O. Box 270021, Fort Collins, Colorado 80527

Rebecca Birch, Austin Women's Political Caucus PAC, 3906 Sojourner St., Austin, Texas 78725

Richard C. Bodin, Jr., Port Arthur Firefighters PAC, 1895 Landsbury Ln., Orange, Texas 77630

James S. Bowie, Citizens For Term Limitation, 706 E. Whitney St., Houston, Texas 77022

Samuel R. Caceres II, Coastal Bend Young Democrats, 7018 Anastasia, Corpus Christi, Texas 78413

Jeff Clark, The Wind Coalition Political Action Committee (PAC), 610 Brazos St., Ste. 210, Austin, Texas 78701

James R. Clements, Wimberley Valley Republican Group, 722 Saddlebridge Dr., Wimberley, Texas 78676

Christopher S. Corbett, Families for Experienced Felony Crime Protection, 5104 Prairie Creek Dr., Flower Mound, Texas 75028

Kenneth W. Flippin, Turn Texas Blue, 6209B Adalee Ave., Austin, Texas 78723

John Carter Frank, Harris County Auto Recyclers Assn. PAC, 13130 Cullen Blvd., Houston, Texas 77047

Eric Garza, Texas Leadership Council, 2374 La Feria Rd., Brownsville, Texas 78520

Lee O. Henderson, Texas Democratic Action Fund, P.O. Box 892, Fort Worth, Texas 76101

John Holcomb, HEB Conservative Coalition, 2405 Aberdeen Dr., Bedford, Texas 76021

Anthony A. Holm, Texans for Truth PAC, 2216 Robinhood St., Houston, Texas 77005

Cynthia K. Humphrey, Substance Abuse Programs PAC, 169 Catalina Ct., Kerrville, Texas 78028

Katheryn L. Johnson, New Blue Political Action Committee, 400 Ivy Ave., Apt. 106, Waco, Texas 76706

Wendy L. Lewis, Momentum PAC, 5339 Fairgreen Ln., Houston, Texas 77048

Martin Lopez, Webb County Deputy Sheriffs' Association Pac, 2102 E. Ejido Ave., Laredo, Texas 78046

Morgan L. Martinez, Citizens of Mission For A Better Government, 4417 N. Mayberry Rd., Palmhurst, Texas 78573

Elmer H. Mayberry, Jr., Coalition for Financial Freedom, 5901 FM 182, Gatesville, Texas 76528

John D. Riley, Prestonwood Country Club Political Action Committee, P.O. Box 796607, Dallas, Texas 75379

Todd M. Smith, Harris County Conservative Tea Party Coalition, 2204 Hazeltine Ln., Austin, Texas 78747

Todd M. Smith, Texas Conservative Tea Party Coalition, 2204 Hazeltine Ln., Austin, Texas 78747

Michael K. Stewart, Aggregate Transporters Association of Texas PAC, 816 Congress Ave., Ste. 1120, Austin, Texas 78701

Valorie Stout, Montague County Republican Women PAC, P.O. Box 5, Montague, Texas 76251

Cheryl Taylor, Red Bird PAC, 6729 Golf Hill Dr., Dallas, Texas 75232

Jerry T. Wright II, Texas Warehouse Assn., 118 Tiger Tail Rd., San Antonio, Texas 78232

TRD-201404172

Natalia Luna Ashley
Executive Director

Texas Ethics Commission

Filed: August 29, 2014

Department of Family and Protective Services

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC), on behalf of the Department of Family and Protective Services, announces the award of contract 530-14-7777-00085 to The Stephen Group, an entity with a principal place of business at 814 Elm Street, Suite 309, Manchester, New Hampshire, 03104. The contractor will assist with Phase 2 of the project which includes implementation of the work plan developed in Phase 1 of the project. In Phase 1 the contractor conducted an operational review of the Child Protective Services (CPS) Division. The notice of consultant contract amendment was published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5638).

The total value of the contract with The Stephen Group is \$1,000,000. The contract was executed on August 18, 2014, and will expire on January 31, 2015, unless extended or terminated sooner by the parties. The

Stephen Group will produce numerous documents and reports during the term of the contract, with the final reporting due by January 31, 2015.

TRD-201404196

Cynthia O'Keeffe
General Counsel

Department of Family and Protective Services

Filed: September 3, 2014

Texas Public Finance Authority

Notice of Public Hearing

Kipp Austin Public Schools, Inc. Education Revenue Bonds

Notice is hereby given of a public hearing to be held on September 29, 2014, at 3:00 p.m., at the offices of Andrews Kurth, LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701, with respect to the proposed issuance of bonds (the Bonds). The Bonds will be issued in one or more series over a period of up to three years, in an aggregate principal amount not to exceed \$85,000,000, pursuant to a plan of finance, as permitted by Treasury Regulation §5f.103-2(f)(3). The proceeds of the Bonds will be loaned to KIPP Austin Public Schools, Inc., a Texas nonprofit corporation (the Borrower), for the following purposes:

(i) to refinance a loan from BB&T in the original principal amount of \$32,000,000, the proceeds of which were used to purchase, construct and renovate campuses known as (a) KIPP Austin College Prep, KIPP Austin Collegiate, KIPP Austin Academy of Arts & Letters, KIPP Austin Comunidad, and KIPP Austin Connections, all located at 8509 FM 969, Bldgs. 627, 676, 619, 628 and 629, respectively, Austin, Texas 78724 (collectively, "Austin Ridge Campus"); and (b) KIPP Austin Vista Middle School, KIPP Austin Beacon Prep, KIPP Austin Leadership Elementary and KIPP Austin Obras, all located at 5107 I-35 South, Suite A, Austin, Texas 78744;

(ii) to finance the acquisition, construction, renovation and equipping of KIPP Austin North Campus at 8004 Cameron Rd, Austin, Texas 78754.

(iii) to finance renovating and equipping the Austin Ridge Campus;

(iv) to pay a portion of the costs of issuance of the Bonds; and

(v) to fund any necessary capitalized interest.

The Project will be owned and operated by the Borrower. The Bonds are not payable out of taxes and are secured by and payable solely from funds provided by the Borrower.

The public hearing will be conducted by Tom Sage or his designee (the Hearing Officer). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing at fax number (713) 238-5040. This notice is published and the hearing is held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended.

TRD-201404200

Kevin Van Oort
General Counsel

Texas Public Finance Authority

Filed: September 3, 2014

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Community First Choice State Plan Amendment

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Wednesday, September 3, 2014, at 2:00 p.m. to receive public comment on transmittal number 14-026 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment would implement the Community First Choice (CFC) program. The public hearing will be held in the Public Hearing Room of the Department of Aging and Disability Services in the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the front of the building facing 51st Street. Members of the public may listen to the hearing by calling the Conference Line, 1 (877) 226-9790 and entering the Access Code, 6677111.

Proposal. HHSC proposes to implement the Community First Choice (CFC) program under section 1915(k) of the Social Security Act. CFC services would be provided at an enhanced federal match rate to individuals who have a physical or intellectual disability, who meet categorical coverage requirements for Medicaid or meet financial eligibility for home and community-based services, and who meet an institutional level of care. The requested effective date for the proposed amendment is March 1, 2015.

Methodology and Justification. Texas Government Code §534.152(a)(1), adopted in 2013, §1.01, requires HHSC to "implement the most cost-effective option for the delivery of basic attendant and habilitation services for individuals with disabilities under the STAR + PLUS Medicaid managed care program that maximizes federal funding for the delivery of services for that program and other similar programs." See Act of May 26, 2013, 83d Leg., R.S., ch. 1310, §1.01, 2013 Tex. Gen. Laws 3409, 3416. Texas Government Code §534.152(a)(2) requires voluntary training to individuals receiving services under the STAR + PLUS Medicaid managed care program or their legally authorized representatives regarding how to select, manage, and dismiss personal attendants providing basic attendant and habilitation services under the program. CFC is available under federal law and lets states provide home and community-based attendant services to Medicaid enrollees with disabilities under their State Plan.

See 42 U.S.C. §1396n(k). This option became available on October 1, 2011, and provides a six percent increase in the Federal Medical Assistance Percentage for expenditures related to this option. The Final Rule was issued May 7, 2012, and regulations are in effect as of July 6, 2012. See 42 C.F.R. pt. 441, subpt. K.

Briefing Package. A briefing package describing the proposed amendment will be available at <http://www.hhsc.state.tx.us/medicaid/about/state-plan/> by August 29, 2014. Interested parties may also obtain a copy of the proposed amendment prior to the hearing by contacting Policy Development Support by telephone at (512) 428-1932; by fax at (512) 730-7472; or by e-mail at berengere.dutra@hhsc.state.tx.us. The proposed amendment also will be available at the public hearing.

Written Comments. Written comments regarding the proposed amendment may be submitted in lieu of, or in addition to, oral testimony. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Policy Development Support Department, Mail Code H-600, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Policy Development at (512) 730-7472; or by e-mail to berengere.dutra@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Policy Development Support Department, Mail Code H-600, 4900 North Lamar, Austin, Texas 78751. Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Beren Dutra at (512) 428-1932 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201404178

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: August 29, 2014

Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Amarillo	BSA Hospital L.L.C. dba The Don and Sybil Harrington Cancer Center A Department of Baptist St. Anthony's Hospital	L06556	Amarillo	04	08/08/14
Arlington	Texas Oncology P.A. dba Texas Cancer Center Arlington	L05116	Arlington	24	08/06/14
Austin	Seton Family of Hospitals	L00268	Austin	133	08/07/14
Austin	Texas Oncology P.A. dba South Austin Cancer Center	L05108	Austin	32	08/12/14
Bay City	Equistar Chemicals L.P.	L03938	Bay City	33	08/13/14
College Station	Scott & White - College Station	L06557	College Station	03	08/04/14
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	101	08/06/14
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	124	08/12/14
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	37	08/06/14
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	100	08/12/14
Dallas	Baylor University Medical Center	L01290	Dallas	123	08/12/14
Dallas	Tenet Hospitals Limited A Texas Limited Partnership dba Doctors Hospital at White Rock Lake	L01366	Dallas	54	08/06/14
Dallas	Cardinal Health	L02048	Dallas	147	08/12/14
Dallas	The Center for Molecular Imaging L.P. dba Southwest Diagnostic Center for Molecular Imaging	L05715	Dallas	08	08/06/14
Dallas	Presbyterian Cancer Center - Dallas L.L.C.	L06056	Dallas	09	08/04/14
Dallas	Triad Isotopes Inc.	L06334	Dallas	08	08/12/14
El Paso	El Paso County Hospital District dba University Medical Center of El Paso	L00502	El Paso	70	08/01/14
El Paso	Texas Oncology P.A. dba El Paso Cancer Treatment Center	L05774	El Paso	12	08/06/14
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	93	08/01/14

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Rice University	L01772	Houston	23	08/07/14
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	67	08/04/14
Houston	Houston Medical Imaging	L05184	Houston	18	08/05/14
Houston	Raj K. Bhalla M.D., P.A.	L05469	Houston	10	08/04/14
Houston	Houston Cyclotron Partners L.P. dba Cyclotope	L05585	Houston	25	08/07/14
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	21	08/07/14
Houston	Triad Isotopes Inc.	L06327	Houston	10	08/12/14
Houston	Memorial Hermann Medical Group	L06430	Houston	11	08/04/14
Irving	Dallas-Ft. Worth Veterinary Imaging Center dba Animal Imaging	L04602	Irving	15	08/04/14
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	32	08/06/14
Lubbock	University Medical Center	L04719	Lubbock	132	08/05/14
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	104	08/05/14
Midlothian	Chaparral Steel Midlothian L.P. dba Gerdaul Ameristeel Midlothian	L02015	Midlothian	34	08/05/14
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	North Richland Hills	74	08/12/14
Pasadena	Arkema Inc.	L06321	Pasadena	03	08/05/14
Plano	Columbia Medical Center of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	100	08/11/14
Point Comfort	Formosa Plastics Corporation – Texas	L03893	Point Comfort	45	08/11/14
Round Rock	Scott & White Hospital Round Rock	L06085	Round Rock	15	08/04/14
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	230	08/05/14
San Antonio	Methodist Healthcare System dba The Gamma Knife Center	L05076	San Antonio	34	08/13/14
San Antonio	Cancer Care Network of South Texas P.A. dba Cancer Care Centers of South Texas	L06449	San Antonio	06	08/01/14
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	49	08/08/14
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	50	08/12/14
Texas City	Valero Refining Company	L02578	Texas City	37	08/05/14
Throughout Tx	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	20	08/13/14
Throughout Tx	Qualspec Services Inc. dba Qualspec	L06432	Deer Park	10	08/01/14
Throughout Tx	Recon Petrotechnologies Inc.	L06026	Fort Worth	19	08/06/14
Throughout Tx	Uranium Energy Corporation	L06127	Goliad	07	08/13/14
Throughout Tx	Environmental Safety & Health Services Inc. dba ES&H Consulting Services Inc.	L06498	Grand Prairie	01	08/13/14
Throughout Tx	Geoscience Engineering & Testing Inc.	L05180	Houston	13	08/04/14
Throughout Tx	Digirad Imaging Solutions Inc.	L05414	Houston	38	08/07/14
Throughout Tx	Austin Bridge & Road L.P.	L06455	Irving	02	08/12/14
Throughout Tx	Braun Intertec Corporation	L06643	Jourdanton	01	08/12/14
Throughout Tx	Streamline Production Systems Inc.	L06658	Kountze	02	08/13/14
Throughout Tx	Furmanite America Inc.	L06554	La Porte	09	08/13/14
Throughout Tx	Tracerco	L03096	Pasadena	86	08/07/14
Throughout Tx	Texas Gamma Ray L.L.C.	L05561	Pasadena	107	08/01/14
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	182	08/13/14
Throughout Tx	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	98	08/07/14
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	54	08/08/14

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Tyler	Physician Reliance Network Inc. dba Tyler Cancer Center	L04788	Tyler	20	08/06/14
Tyler	Specialty Physicians of East Texas P.A. dba TIMA	L05597	Tyler	10	08/04/14
Waco	Waco Cardiology Associates	L05158	Waco	18	08/04/14
Pasadena	CHCA Bayshore L.P. dba Bayshore Medical Center	L00153	Pasadena	99	08/14/14
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	52	08/14/14
Port Arthur	The Medical Center of Southeast Texas L.P.	L01707	Port Arthur	72	08/14/14
Throughout Tx	Libertytown USA 2 Inc. dba Applus Rtd USA Inc.	L06555	Houston	06	08/14/14
Throughout Tx	Texas Department of Transportation	L00197	Austin	172	08/14/14
Throughout Tx	FTS International Services L.L.C.	L06188	Fort Worth	14	08/14/14
Throughout Tx	IRISNDT Inc.	L06435	Houston	11	08/14/14
Throughout Tx	Basic Energy Services L.P.	L06425	Eastland	05	08/14/14
College Station	Texas A&M University	L00448	College Station	142	08/14/14
Sugar Land	GE Energy Oilfield Technology Inc.	L06542	Sugar Land	04	08/14/14
Dumas	Moore County Hospital District dba Memorial Hospital	L03540	Dumas	30	08/14/14
Houston	Houston Refining L.P.	L00187	Houston	70	08/14/2014

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout Tx	Texas Department of Transportation	L00197	Austin	171	08/11/14
Throughout Tx	Parkland Engineering and Testing Inc.	L04089	Irving	08	08/01/14

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
The Woodlands	Woodlands Internists P.A.	L06201	The Woodlands	05	08/06/14
Throughout Tx	Metco	L03018	Houston	218	08/11/14

TRD-201404171
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: August 29, 2014

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by UNIQUE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application to do business in the State of Texas by THE DENTAL CONCERN, INC., a foreign health maintenance organization. The home office is in Louisville, Kentucky.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201404194
 Sara Waitt
 General Counsel
 Texas Department of Insurance
 Filed: September 3, 2014

◆ ◆ ◆
Legislative Budget Board

Request for Qualifications

The Legislative Budget Board (LBB) issues this Request for Qualifications (RFQ) to pre-qualify vendors to assist the LBB in conduct-

ing a variety of performance reviews of Texas School, Charter School, and Community College Districts (Districts). Vendors may apply to be pre-qualified to provide expertise related to one or more of the functional areas listed in Section 3.2 of the RFQ.

Contact: The LBB is the Issuing Office and the sole point of contact for the RFQ. Questions concerning the RFQ must be in writing and addressed to:

Legislative Budget Board

Fax: (512) 475-2902

E-mail: contract.manager@lbb.state.tx.us

Closing Date: Applications must be received in the issuing office at the address specified above no later than 5:00 p.m. CZT, on August 31, 2015. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: The Team Manager with the assistance of the Contract Administrator will review all applications for compliance, experience, and thoroughness. All applications will be evaluated under the following criteria: Knowledge of Functional Area and Review Process and Experience Related to Functional Area and Review Process.

The LBB reserves the right to accept or reject any or all applications submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFQ. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFQ.

This is an "on-going" process of pre-qualifying applicants.

TRD-201404190

Julie Ivie

Assistant Director

Legislative Budget Board

Filed: September 3, 2014



Texas Lottery Commission

Instant Game Number 1683 "Texas Loteria"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1683 is "TEXAS LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1683 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1683.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE HEN SYMBOL, THE EMBLEM SYMBOL, THE SEEDS SYMBOL, THE MOONRISE SYMBOL, THE BALLOONS SYMBOL, THE PINATA SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE SUNSET SYMBOL, THE PARASOL SYMBOL, THE LADYBUG SYMBOL, THE SHOES SYMBOL, THE NEWSPAPER SYMBOL, THE CHERRIES SYMBOL, THE BOWL SYMBOL, THE HORSE SYMBOL, THE FOREST SYMBOL, THE TULIP SYMBOL, THE TOAD SYMBOL, THE LOG SYMBOL, THE SPEAR SYMBOL, THE CORN SYMBOL, THE PARTRIDGE SYMBOL and THE MARACAS SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1683 - 1.2D

PLAY SYMBOL	CAPTION
THE HEN SYMBOL	THE HEN
THE EMBLEM SYMBOL	THE EMBLEM
THE SEEDS SYMBOL	THE SEEDS
THE MOONRISE SYMBOL	THE MOONRISE
THE BALLOONS SYMBOL	THEBALLOONS
THE PIÑATA SYMBOL	THE PIÑATA
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE SUNSET SYMBOL	THE SUNSET
THE PARASOL SYMBOL	THEPARASOL
THE LADYBUG SYMBOL	THELADYBUG
THE SHOES SYMBOL	THE SHOES
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE CHERRIES SYMBOL	THECHERRIES
THE BOWL SYMBOL	THE BOWL
THE HORSE SYMBOL	THE HORSE
THE FOREST SYMBOL	THE FOREST
THE TULIP SYMBOL	THE TULIP
THE TOAD SYMBOL	THE TOAD
THE LOG SYMBOL	THE LOG
THE SPEAR SYMBOL	THE SPEAR
THE CORN SYMBOL	THE CORN
THE PARTRIDGE SYMBOL	THEPARTRIDGE
THE MARACAS SYMBOL	THEMARACAS

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$33.00, \$50.00, \$80.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1683), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1683-0000001-001.

K. Pack - A Pack of "TEXAS LOTERIA" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS LOTERIA" Instant Game No. 1683 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "TEXAS LOTERIA" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 30 (thirty) Play Symbols. The player scratches the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. El jugador raspa las CARTAS DEL GRITON para revelar 14 símbolos. El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTAS DEL GRITON para revelar una línea completa horizontal, vertical o diagonal para ganar el premio para esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to three (3) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same positions.

C. No matching Play Symbols in the CALLER'S CARD play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

E. CALLER'S CARD Play Symbols will have a random distribution on the Ticket unless restricted by other parameters, play action or prize structure.

F. No matching Play Symbols are allowed on the PLAY BOARD play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTERIA" Instant Game prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00 or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$33.00, \$50.00, \$80.00 or \$300 Ticket. In the event the Texas Lottery

Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTERIA" Instant Game prize of \$3,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS LOTERIA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TEXAS LOTERIA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TEXAS LOTERIA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 Tickets in the Instant Game No. 1683. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1683 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	2,822,400	7.14
\$4	604,800	33.33
\$7	537,600	37.50
\$10	336,000	60.00
\$17	336,000	60.00
\$20	336,000	60.00
\$30	33,600	600.00
\$33	16,800	1,200.00
\$50	15,960	1,263.16
\$80	13,440	1,500.00
\$300	10,080	2,000.00
\$3,000	300	67,200.00
\$50,000	40	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1683 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1683, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201404191
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: September 2, 2014

◆ ◆ ◆
Texas Parks and Wildlife Department

Notice of Contract Award

Pursuant to Texas Government Code, Chapter 2254, the Texas Parks and Wildlife Department announces this notice of award for consulting services for a Desktop Alternatives Analysis of restoration methodologies for large scale impacts to oyster reef habitats in Galveston Bay Texas under Request for Proposals 802-14-26558 (RFP). The RFP was published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5658). The contract was awarded to Freese and Nichols Inc., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109. The total amount of the contract is not to exceed \$48,900.00.

The term of the contract is August 28, 2014 through February 28, 2015.

TRD-201404173
 Ann Bright
 General Counsel
 Texas Parks and Wildlife Department
 Filed: August 29, 2014

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 22, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of VYVU Broadband J, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42776.

Applicant seeks to amend its service area footprint to DELETE the following:

- (1) all of the territory within the city limits of Springtown, Texas in Parker County,
- (2) all of the territory in Parker County within two miles of the city limits of Springtown Texas, and
- (3) all of the territory within the city limits of Huntington, Texas in Angelina County.

Applicant seeks to expand and/or more specifically define its service area footprint to INCLUDE the following:

- (1) all of the territory within the city limits of Graford, Texas and the unincorporated territory outside the city limits of Graford, Texas within one mile of the city limits of Graford, Texas in Palo Pinto County,
- (2) all of the territory within the city limits of Bryson, Texas and the unincorporated territory outside the city limits of Bryson, Texas within one mile of the city limits of Bryson, Texas in Jack County,
- (3) all of unincorporated territory inside Possum Kingdom Lake and all of the unincorporated territory within five miles of Possum Kingdom Lake in Palo Pinto County, Young County, Stephens County, and Jack County,
- (4) all of the unincorporated territory outside the city limits of Alvord, Texas within two miles of the city limits of Alvord, Texas in Wise County,
- (5) all of the territory within the city limits of Bridgeport, Texas, and the unincorporated territory outside the city limits of Bridgeport, Texas within two miles of the city limits of Bridgeport, Texas in Wise County,
- (6) all of the unincorporated territory in Wise County within two miles north and within two miles south of the centerline of Highway 380 between Bridgeport, Texas and Runaway Bay, Texas and between Bridgeport, Texas and Decatur, Texas,
- (7) all of the territory within the city limits of Chico, Texas and the unincorporated territory outside the city limits of Chico, Texas within one mile of the city limits of Chico, Texas in Wise County,
- (8) all of the unincorporated territory in Wise County within one mile east and within one mile west of the centerline of Highway 101 between Chico, Texas and Bridgeport, Texas,
- (9) All of the unincorporated territory outside the city limits of Jacksboro, Texas within two miles of the city limits of Jacksboro Texas in Jack County,
- (10) All of the territory within the city limits of Lake Bridgeport, Texas and all of the unincorporated territory outside the city limits of Lake Bridgeport, Texas within one mile of the city limits of Lake Bridgeport, Texas in Wise County,
- (11) All of the unincorporated territory within Wise County within two miles east and within two miles west of the centerline of Highway 287 between Decatur, Texas and Alvord, Texas and between Alvord, Texas and the Montague County line,

(12) All of the unincorporated territory within Montague County within two miles east and within two miles west of the centerline of Highway 287 between Bowie, Texas and the Wise County line.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42776.

TRD-201404141
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2014



Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 26, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156.

Docket Title and Number: Application of One Ring Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 42782.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant seeks to provide service throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 19, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42782.

TRD-201404143
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2014



Notice of Application for Distribution of Proceeds from Letter of Credit Pursuant to P.U.C. Substantive Rule §25.107

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 25, 2014, for distribution of proceeds from the letter of credit provided by Reach Energy, LLC (Reach) pursuant to P.U.C. Substantive Rule §25.107.

Docket Style and Number: Joint Petition of CenterPoint Energy Houston Electric, LLC, Texas-New Mexico Power Company, AEP Texas Central Company, AEP Texas North Company, and Oncor Electric Delivery Company LLC to Distribute Proceeds from the Letter of Credit Provided by Reach Energy, LLC, Docket Number 42778.

The Application: The joint petition of the Utilities claims that as of July 1, 2014, net of deposits held and inclusive of interest and penalties, Reach Energy, LLC owes the Utilities more than \$450,000. The Utilities believe that Reach Energy, LLC has submitted a letter of credit

to the commission to satisfy its financial obligations under P.U.C. Substantive Rule §25.107.

P.U.C. Substantive Rule §25.107(f)(6)(A)(v) provides that proceeds from that letter of credit may be used to satisfy "services provided by a TDU." The Utilities request that the commission distribute the proceeds of Reach Energy, LLC's letter of credit to satisfy the outstanding amounts owed to the Utilities pursuant to P.U.C. Substantive Rule §25.107(f).

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42778.

TRD-201404142
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2014



Public Notice of Workshop

The staff of the Public Utility Commission of Texas (commission or PUC) will hold a workshop regarding Project No. 42740, *Rulemaking to Amend Substantive Rule 25.101 Relating to Certification Criteria*, on Monday, October 20, 2014, at 9:30 a.m. The workshop will be conducted in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Staff will file a strawman rule and workshop questions in the project by October 6, 2014. The filing may be accessed by visiting the PUC's website at <http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch.asp> and entering 42740 in the control number field.

At the August 7 and 21, 2014 Open Meetings, the commission discussed the need for a rulemaking to address two issues related to routing transmission lines: (a) route deviations to accommodate engineering constraints after a route has been approved; and (b) elimination of the preference for transmission routes to parallel pipelines. The purpose of this workshop is to receive stakeholder input on these two issues.

Questions concerning the workshop or this notice should be referred to Chris Roelse, Infrastructure and Reliability Division, at (512) 936-7356 or at chris.roelse@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201404198
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 3, 2014



Public Notice of Workshop and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop in Project Number 42786, *Review of Advanced Metering System Web Portals*, on Tuesday, October 7, 2014, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The questions below will be discussed at the work-

shop. In addition, commission staff seeks written responses to the questions. Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Friday, October 3, 2014. All responses should reference Project Number 42786.

Background

Commission Substantive Rule §25.130, relating to Advance Metering, requires an electric utility that deploys an advanced metering system (AMS) to have a web portal that enables a customer and the customer's retail electric provider (REP) to access the customer's usage data. See Substantive Rule §25.130(d)(4)(D) and (G) and (g)(1)(E). The utilities in the Electric Reliability Council of Texas (ERCOT) power region are in various stages of deploying AMS. CenterPoint Energy Houston Electric, LLC (CenterPoint); Oncor Electric Delivery Company LLC (Oncor); and AEP Texas Central Company and AEP Texas North Company (AEP Texas) each have completed the deployment of AMS. Texas-New Mexico Power Company (TNMP) is scheduled to complete deployment in 2016. Sharyland Utilities, L.P. is scheduled to file an AMS deployment plan by January 2015. None of the Texas utilities outside of the ERCOT power region have announced that they plan to deploy AMS.

CenterPoint, Oncor, AEP Texas, and TNMP have a contract - referred to as the joint development and operating agreement (JDOA) - in which they jointly own and operate through a committee (JDOA committee or JDOA) a single web portal for their AMS (joint portal). Joint portal functionality to better facilitate access to a customer's AMS data by a third-party provider (upon consent of the customer) is scheduled for the fourth quarter of 2014.

In addition to its role in the wholesale market, ERCOT is the "registration agent" for the competitive retail market. See Public Utility Regulatory Act (PURA) §39.151(a)(3) and (4). As the registration agent in the ERCOT region, ERCOT keeps track of which REP serves each customer and the electricity consumed by each customer, which is used for settlement of wholesale market transactions by ERCOT. Issues concerning ERCOT's responsibilities as the registration agent are addressed through the applicable ERCOT stakeholder groups and committees, consistent with applicable commission rules. See, e.g., Substantive Rule §25.474(l) (duty of registration agent pertaining to a move-in or switch request by a REP). Disputes are resolved by the ERCOT board, subject to appeal to the commission. See Procedural Rule §22.251.

The Advanced Metering Working Group (AMWG) of the Retail Market Subcommittee (RMS) at ERCOT is used as a forum to discuss AMS issues in ERCOT, including the joint portal. However, any votes by RMS on joint portal issues are only advisory. All decisions concerning the joint portal are made by the JDOA.

Questions

1. Joint portal background. Describe the existing and potential future uses of the joint portal by customers, REPs, and third-party providers.
2. Joint portal operational structure. What operational structure should be used to operate the joint portal?
 - a. Should the JDOA or another joint utility management structure be used?
 - b. Should the ownership and/or operation of the joint portal be transferred to ERCOT? If so, what are the issues associated with such transfer?
 - c. Should utilities that deploy AMS be required to use the joint portal as their AMS web portal?

d. Should the utilities that are currently parties to the JDOA be required to allow utilities that deploy AMS to use the joint portal?

e. What process should be used to make any changes to the operational structure of the joint portal?

3. Joint portal cost recovery.

a. Should the costs for additional functionality for the joint portal be recovered outside of base rates under a cost recovery mechanism such as discretionary service fees or AMS surcharges?

b. How should the costs for additional functionality and the continued operation of the joint portal be allocated among utilities?

4. Joint portal decision making process. What process should be used to make decisions concerning the joint portal?

a. What process should be used to decide whether additional functionality should be added?

b. What process should be used to decide what operational data should be provided to REPs or the public?

c. Should the JDOA be required to provide a written response within a specified period of time to a vote by RMS on a joint portal issue?

5. Joint portal dispute resolution. What process should be used to resolve disputes concerning the operation and functionality of the joint portal?

a. What process should be used to resolve a dispute for which RMS voted on?

b. What process should a REP use to resolve a dispute?

c. What process should a retail customer use to resolve a dispute?

d. What process should a third-party provider use to resolve a dispute?

e. What process should a utility use to resolve a dispute with the JDOA? Should all disputes, that a utility participating in the JDOA has, be resolved as a contractual dispute in court or should policy issues, concerning the JDOA, be resolved by the commission?

6. Other issues. Are there other issues concerning the joint portal?

This notice is not a formal notice of proposed rulemaking; however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking. Questions concerning the workshop or this notice should be referred to Christine Wright, Senior Policy Analyst, Infrastructure and Reliability Division, at Christine.Wright@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201404201

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 3, 2014



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Weslaco through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the

Government Code. The TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Weslaco Mid Valley Municipal Airport, TxDOT CSJ No. 15BPWESLA. Scope: Develop a comprehensive five-year airport business/development plan.

The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1 (800) 68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SIX completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later October 7, 2014, 4:00 p.m. (CDT). Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Trudy Hill.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>, under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1 (800) 68-PILOT (74568). For procedural questions, please contact Trudy Hill, Grant Manager. For technical questions, please contact Michelle Hannah, Project Manager.

TRD-201404134

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 28, 2014



Texas Water Development Board

Applications for September 4, 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21745, a request from the Lower Colorado River Authority, P.O. Box 220, Austin, Texas 78767-0220, received May 23, 2014, for a \$250,000,000 loan from the Texas Water Development Fund to finance the planning, acquisition, design, and construction of an off-channel reservoir, and associated improvements.

Project ID #10418, a request from the Beaver Creek Water Control and Improvement District No. 1, 1343 Mallard Drive 82, Caldwell, Texas 77836, received June 25, 2014, for a \$476,112 grant from the Economically Distressed Area Program to finance design of a project to construct a new water system.

Project ID #73690, a request from the City of Early, P.O. Box 3100, Early, Texas 76803-3100, received May 2, 2014, for a \$8,365,000 loan from the Clean Water State Revolving Fund to finance planning, acquisition, design and construction for wastewater improvements, utilizing the pre-design funding option.

Project ID #73692, a request from the City of Hutto, 401 W. Front St., Hutto, Texas 78634, received June 18, 2014, for a \$21,740,000 loan

from the Clean Water State Revolving Fund for design and construction of a lift station, force main, and a wastewater treatment plant.

Project ID #73687, a request from the City of Los Fresnos, 200 N. Brazil St., Los Fresnos, Texas 78566-3643, received September 4, 2013, for a \$820,000 loan and \$344,980 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs for improvements and expansion of the wastewater system.

Project ID #62627, a request from the City of Los Fresnos, 200 N. Brazil St., Los Fresnos, Texas 78566-3643, received September 4, 2013, for (a) a \$1,000,000 loan and \$426,101 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs for improvements and expansion of the water treatment plant and system; and (b) waiver of the requirement for consistency with the Regional and State water Plan.

TRD-201404133

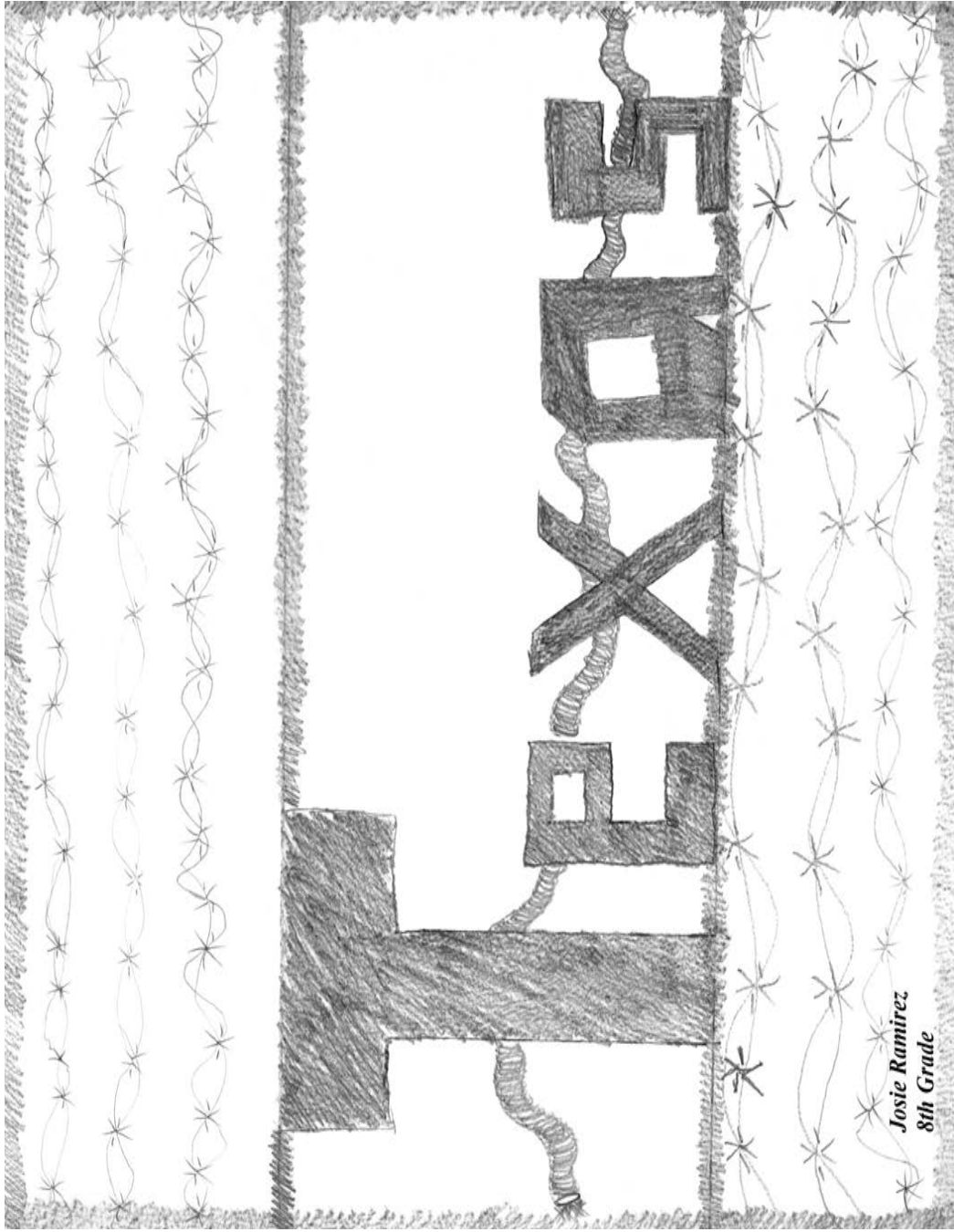
Les Trobman

General Counsel

Texas Water Development Board

Filed: August 27, 2014





Josie Ramirez
8th Grade

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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